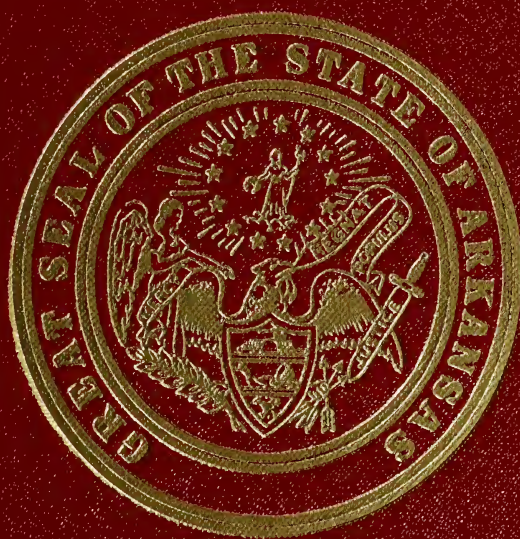


**ARKANSAS CODE  
OF 1987  
ANNOTATED**

**OFFICIAL EDITION**



**VOLUME 6 • TITLES 7; 8, CH. 1-4**



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# ARKANSAS CODE OF 1987 ANNOTATED



## VOLUME 6 2011 Replacement TITLE 7: ELECTIONS TITLE 8: ENVIRONMENTAL LAW (CHAPTERS 1-4)

*Prepared by the Editorial Staff of the Publisher*

Under the Direction and Supervision of the  
ARKANSAS CODE REVISION COMMISSION

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## Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2011 Regular Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2011 Ark. LEXIS 519 (October 13, 2011) and 2011 Ark. App. LEXIS 652 (October 12, 2011).

Federal Supplement through October 7, 2011.

Federal Reporter 3d Series through October 7, 2011.

United States Supreme Court Reports through October 7, 2011.

Bankruptcy Reporter through October 7, 2011.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

ALR 6th through Volume 55, p. 635.

ALR Fed. 2d through Volume 46, p. 473.

## **Titles of the Arkansas Code**

- |   |   |
|---|---|
| 1. General Provisions   | 16. Practice, Procedure, and Courts             |
| 2. Agriculture  | 17. Professions, Occupations, and Businesses    |
| 3. Alcoholic Beverages  | 18. Property                                    |
| 4. Business and Commercial Law                                  | 19. Public Finance                              |
| 5. Criminal Offenses  | 20. Public Health and Welfare                   |
| 6. Education  | 21. Public Officers and Employees               |
| 7. Elections  | 22. Public Property                             |
| 8. Environmental Law  | 23. Public Utilities and Regulated Industries   |
| 9. Family Law   | 24. Retirement and Pensions                     |
| 10. General Assembly  | 25. State Government                            |
| 11. Labor and Industrial Relations                              | 26. Taxation                                    |
| 12. Law Enforcement, Emergency Management, and Military Affairs | 27. Transportation                              |
| 13. Libraries, Archives, and Cultural Resources                 | 28. Wills, Estates, and Fiduciary Relationships |
| 14. Local Government  |   |
| 15. Natural Resources and Economic Development                  |   |



## **User's Guide**

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.





# TITLE 7

## ELECTIONS

### CHAPTER.

1. GENERAL PROVISIONS.
2. CONGRESSIONAL DISTRICTS.
3. POLITICAL PARTIES.
4. BOARDS OF ELECTION COMMISSIONERS AND OTHER ELECTION OFFICERS.
5. ELECTION PROCEDURE GENERALLY.
6. CAMPAIGN PRACTICES.
7. NOMINATIONS AND PRIMARY ELECTIONS.
8. FEDERAL ELECTIONS.
9. INITIATIVES, REFERENDA, AND CONSTITUTIONAL AMENDMENTS.
10. NONPARTISAN ELECTION OF JUDGES.
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## CHAPTER 1

### GENERAL PROVISIONS

#### SECTION.

- 7-1-101. Definitions.
- 7-1-102. Work time to be scheduled for voting — Penalty.
- 7-1-103. Miscellaneous misdemeanor offenses — Penalties.
- 7-1-104. Miscellaneous felonies — Penalties.

#### SECTION.

- 7-1-105. Majority of qualified electors.
- 7-1-106. Election laws expert.
- 7-1-107. [Repealed.]
- 7-1-108. Election law deadlines.
- 7-1-109. Enforcement of election laws.
- 7-1-110. Voting information on Internet website.

**Effective Dates.** Acts 1969, No. 465, Art. 13, § 10: approved Apr. 17, 1969. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the present election laws are ancient and outdated in part and have caused and are causing much confusion and controversy, that there are particular problem areas in the present law which need immediate legislation in order to resolve same, that elections are and will continue to be held and conducted in this atmosphere of confusion and controversy until these problem areas are resolved and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in force and effect from and after its passage."

Acts 1970 (Ex. Sess.), No. 3, § 4: Mar. 6, 1970. Emergency clause provided: "It is hereby found and determined by the Sixty-Seventh General Assembly meeting in Extraordinary Session that requiring all dram shops and drinking houses to remain closed the night after an election, after the polls have closed, serves no useful purpose, and is unnecessarily restrictive to the operation of dram shops and drinking houses, and the free enterprise system, and that this act will correct this undesirable situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

Identical Acts 1995, Nos. 946 and 963, § 14: Jan. 1, 1996.

Acts 2001, No. 1839, § 35: Became law without Governor's signature Apr. 20, 2001. Emergency clause provided: "It is found and determined by the General Assembly that various provisions of the Arkansas Code relating to campaign financing and ethics are vague or otherwise in need of modification; that this act accomplishes those purposes; and that this act should go into effect as soon as possible so that those persons who are subject to the provisions of the various ethics and campaign finance statutes receive the benefit of the clarifications as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1167, § 2: July 1, 2005.  
 Acts 2005, No. 2233, § 48: Jan. 1, 2006.  
 Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

**Am. Jur.** 25 Am. Jur. 2d, Elections, § 1 et seq.

**Ark. L. Notes.** Cihak and Springman, HAVA and Arkansas Election Law Reform: Compliance and Promise, 2006 Arkansas L. Notes 1.

**C.J.S.** 29 C.J.S., Elections, § 1 et seq.

**U. Ark. Little Rock L.J.** Survey of

Arkansas Law, Constitutional Law, 1 U. Ark. Little Rock L.J. 140.

Niswanger, A Practitioner's Guide to Challenging and Defending Legislatively Proposed Constitutional Amendments in Arkansas, 17 U. Ark. Little Rock L.J. 765.

## CASE NOTES

### ANALYSIS

Enforcement of Election Laws.  
 Vacancies.

### Enforcement of Election Laws.

Election laws are mandatory if enforcement is sought prior to the holding of the election. After election, the election laws will be held as directory only in support of the result. *McKenzie v. De Witt*, 196 Ark. 1115, 121 S.W.2d 71 (1938) (decision under prior law).

This chapter does not provide for the award of attorney's fees to the prevailing party in an election matter. *St. Francis*

*County v. Joshaway*, 346 Ark. 496, 58 S.W.3d 361 (2001).

Election laws should be strictly obeyed. *McKenzie v. De Witt*, 196 Ark. 1115, 121 S.W.2d 71 (1938) (decision under prior law).

### Vacancies.

This title, through §§ 7-1-101(20), 7-7-101, and 7-7-102, requires political parties to hold primary elections (rather than conventions) except where a vacancy in nomination or vacancy in office exists. *Lewis v. West*, 318 Ark. 334, 885 S.W.2d 663 (1994).

**7-1-101. Definitions.**

As used in this title, unless the context or chapter otherwise requires:

(1) "Administrator" means the administrative head of a long-term care or residential care facility licensed by the state who is authorized in writing by a patient of the long-term care or residential care facility to deliver the application for an absentee ballot and to obtain or deliver the absentee ballot to the county clerk;

(2) "Affidavit of eligibility" means an affidavit signed by a candidate for elective office stating that the candidate is eligible to serve in the office he or she seeks;

(3) "Audit log" means an electronically stored record of events and ballot images from which election officials may produce a permanent paper record with a manual audit capacity for a voting system using voting machines;

(4) "Authorized agent" means a person who is identified and authorized to deliver the application, obtain a ballot, and deliver the ballot on the day of the election to the county clerk for an applicant who is medically unable to cast a ballot at a polling site due to an unforeseen medical necessity as set forth in an affidavit from the administrator of a hospital or long-term care or residential care facility;

(5) "Canvassing" means examining and counting the returns of votes cast at a public election to determine authenticity;

(6) "Certificate of choice" means a certificate, signed by an executive officer of a political group that submits a petition to place its candidates for President and Vice-President on the ballot, designating the names of its candidates to appear on the ballot;

(7) "Constitutional officers of this state" means the offices of the Governor, Lieutenant Governor, Secretary of State, Attorney General, Auditor of State, Treasurer of State, and Commissioner of State Lands;

(8) "Counting location" means a location selected by the county board of election commissioners with respect to all elections for the automatic processing or counting, or both, of votes;

(9) "Designated bearer" means any person who is identified and authorized by the applicant to obtain from the county clerk or to deliver to the county clerk the applicant's ballot;

(10) "Election official" or "election officer" means a person who is a member of the county board of election commissioners or a person who is a poll worker designated by a county board of election commissioners to be an election clerk, election judge, or election sheriff;

(11) "Electronic vote tabulating device" means a device used to electronically scan a marked paper ballot for the purpose of tabulation;

(12) "Fail-safe voting" means the mechanism established under the National Voter Registration Act of 1993 that allows a voters who has moved within the same county to vote at his or her new precinct without having updated his or her voter registration records;

(13) "First-time voter" means any registered voter who has not previously voted in a federal election in the state;



(14) "General or special election" means the regular biennial or annual elections for election of United States, state, district, county, township, and municipal officials and the special elections to fill vacancies therein and special elections to approve any measure. The term as used in this act shall not apply to school elections for officials of school districts;

(15) "Majority party" means that political party in the State of Arkansas whose candidates were elected to a majority of the constitutional offices of this state in the last preceding general election;

(16) "Marking device" means any approved device for marking a paper ballot with ink or other substance that will enable the votes to be tabulated by means of an electronic vote tabulating device;

(17) "Member of the merchant marine" means:

(A) An individual employed as an officer or crew member of:

(i) A vessel documented under the laws of the United States;

(ii) A vessel owned by the United States; or

(iii) A vessel of foreign-flag registry under charter or control of the United States;

(B) An individual enrolled with the United States for employment or training for employment or maintained by the United States for emergency relief service as an officer or crew member of any such vessel; or

(C) As defined in the federal Uniformed and Overseas Citizens Absentee Voting Act if different from the definition stated in this subdivision (17);

(18) "Minority party" means that political party whose candidates were elected to less than a majority of the constitutional offices of this state in the last preceding general election or the political party that polled the second greatest number of votes for the office of Governor in the last preceding general election if all of the elected constitutional officers of this state are from a single political party;

(19) "Party certificate" means a written statement or receipt signed by the secretary or chair of the county committee or of the state committee, as the case may be, of the political party evidencing the name and title proposed to be used by the candidate on the ballot, the position the candidate seeks, payment of the fees, and filing of the party pledge, if any, required by the political party;

(20) "Party filing period" means the period of time established by law for the candidate for a political party's nomination to file his or her party certificate with the Secretary of State or county clerk, as the case may be;

(21)(A) "Political party" means any group of voters that at the last preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office.

(B) A group of electors shall not assume a name or designation that is so similar in the opinion of the Secretary of State to that of an existing political party as to confuse or mislead the voters at an election.

(C) When any political party fails to obtain three percent (3%) of the total votes cast at an election for the office of Governor or nominees for presidential electors, it shall cease to be a political party;

(22) "Polling site" means a location selected by the county board of election commissioners where votes are cast;

(23) "Precinct" means the geographical boundary lines dividing a county, municipality, township, or school district for voting purposes;

(24) "Primary election" means any election held by a political party in the manner provided by law for the purpose of selecting nominees of the political party for certification as candidates for election at any general or special election in this state;

(25) "Provisional ballot" means a ballot:

(A) Cast by special procedures to record a vote when there is some question concerning a voter's eligibility; and

(B) Counted contingent upon the verification of the voter's eligibility;

(26) "Qualified elector" means a person who holds the qualifications of an elector and who is registered pursuant to Arkansas Constitution, Amendment 51;

(27) "Sample ballot" means a ballot for distribution to the public or the press marked with the word "SAMPLE" so as to prevent the production of counterfeit ballots;

(28) "Uniformed services" means the United States Army, United States Navy, United States Air Force, United States Marine Corps, and United States Coast Guard, the United States Public Health Service Commissioned Corps, and the National Oceanic and Atmospheric Administration\* Commissioned Officer Corps, or as defined in the federal Uniformed and Overseas Citizens Absentee Voting Act if different from the definition stated in this subdivision (28);

(29) "Vacancy in election" means the vacancy in an elective office created by death, resignation, or other good and legal cause arising prior to election to the office at a general or special election but arising subsequent to the certification of the ballot;

(30) "Vacancy in nomination" means the circumstances in which:

(A) The person who received the majority of votes at the preferential primary election or general primary election cannot accept the nomination due to death or notifies the party that he or she will not accept the nomination due to serious illness, moving out of the area from which the person was elected as the party's nominee, or filing for another office preceding the final date for certification of nominations; or

(B) There is a tie vote for the same office at a general primary election;

(31)(A) "Vacancy in office" means the vacancy in an elective office created by death, resignation, or other good and legal cause arising subsequent to election to the office at a general or special election or arising subsequent to taking office and before the expiration of the

term of office in those circumstances wherein the vacancy must be filled by a special election rather than by appointment.

(B) The phrase “vacancy in office” shall not apply to the election of a person at a general election to fill an unexpired portion of a term of office;

(32) “Voter-verified paper audit trail” means a contemporaneous paper record of a ballot printed for the voter to confirm his or her votes before the voter casts his or her ballot that:

(A) Allows the voter to verify the voter-verified paper audit trail before the casting of the voter’s ballot;

(B) Is not retained by the voter;

(C) Does not contain individual voter information;

(D) Is produced on paper that is sturdy, clean, and resistant to degradation; and

(E) Is readable in a manner that makes the voter’s ballot choices obvious to the voter without the use of computer or electronic code;

(33) “Voting machine” means either:

(A) A direct-recording electronic voting machine that:

(i) Records votes by means of a ballot display provided with mechanical or electro-optical components that may be actuated by the voter;

(ii) Processes the data by means of a computer program;

(iii) Records voting data and ballot images in internal and external memory components; and

(iv) Produces a tabulation of the voting data stored in a removable memory component and on a printed copy; or

(B) An electronic device for marking a paper ballot to be electronically scanned; and

(34) “Voting system” means:

(A) The total combination of mechanical, electromechanical, or electronic equipment, including the software, firmware, and documentation required to program, control, and support the equipment that is used to:

(i) Define ballots;

(ii) Cast and count votes;

(iii) Report or display election results; and

(iv) Maintain and produce any audit trail information; and

(B) The practices and documentation used to:

(i) Identify system components and versions of components;

(ii) Test the system during its development and maintenance;

(iii) Maintain records of system errors and defects;

(iv) Determine specific system changes to be made to a system after the initial qualification of the system; and

(v) Make available any materials to the voter, including without limitation notices, instructions, forms, or paper ballots.



§ 1; 1995, No. 963, § 1; 1997, No. 445, § 1; 1997, No. 1082, § 1; 1999, No. 1342, § 1; 2003, No. 994, § 1; 2003, No. 1731, § 1; 2005, No. 2233, § 2; 2007, No. 224, § 1; 2007, No. 1020, § 1; 2009, No. 250, § 1; 2009, No. 659, § 5; 2009, No. 959, § 2; 2009, No. 1480, § 14; 2011, No. 203, § 1.

**Publisher's Notes.** This section was declared to be unconstitutional in *Citizens to Establish Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

**Amendments.** The 2007 amendment by No. 224 added present (21) and redesignated the remaining subdivisions accordingly.

The 2007 amendment by No. 1020 added the subdivision designated herein as (23) and redesignated the remaining subdivisions accordingly.

The 2009 amendment by No. 250 substituted "administrator" for "administrative head" in (3), and made minor stylistic changes.

The 2009 amendment by No. 659 inserted (15) and (25), and redesignated the remaining subdivisions accordingly.

The 2009 amendment by No. 959 inserted (5), redesignated the remaining subdivisions accordingly, and made minor stylistic changes.

The 2009 amendment by No. 1480 inserted present (2) and (18) and redesignated the remaining subdivisions accordingly.

The 2011 amendment subdivided (30) into introductory language and (30)(A); and added (30)(B).

**Effective Dates.** Acts 2005, No. 2233, § 48, provided: "This act shall become effective on January 1, 2006."

**Meaning of "this act".** Acts 1969, No. 465, codified as §§ 7-1-101, 7-1-103 — 7-1-105, 7-3-101 — 7-3-108, 7-4-101 — 7-4-105, 7-4-107 — 7-4-112, 7-5-101, 7-5-102, 7-5-103 [repealed], 7-5-202 — 7-5-209, 7-5-210 [repealed], 7-5-211, 7-5-301, 7-5-302 [repealed], 7-5-303 [repealed], 7-5-304 — 7-5-306, 7-5-307 [repealed], 7-5-308, 7-5-309, 7-5-312 [repealed], 7-5-313 [repealed], 7-5-314 — 7-5-319, 7-5-401, 7-5-402, 7-5-405 — 7-5-417, 7-5-501 [repealed], 7-5-502 — 7-5-504, 7-5-505 [repealed], 7-5-506 [repealed], 7-5-507, 7-5-508 [repealed], 7-5-509, 7-5-511 [repealed], 7-5-512, 7-5-513, 7-5-514 [repealed], 7-5-515 — 7-5-518, 7-5-519 [repealed], 7-5-520 — 7-5-522, 7-5-524 — 7-5-531, 7-5-701 — 7-5-706, 7-5-801 — 7-5-809, 7-6-101 — 7-6-105, 7-7-101 — 7-7-105, 7-7-201 — 7-7-203, 7-7-301 — 7-7-307, 7-7-309, 7-7-310 [repealed], 7-7-401, 7-7-402, 7-7-403 [repealed], 7-8-101 — 7-8-104, 7-8-301, 7-8-302, 7-8-304 — 7-8-307, 25-16-801.

Identical Acts 1995, Nos. 946 and 963, codified as §§ 7-1-101, 7-5-107, 7-5-211, 7-5-301, 7-5-302 [repealed], 7-5-305, 7-5-306, 7-5-314, 7-5-317, 7-7-308, 7-7-310, 7-7-312, 7-7-504 [repealed].

**U.S. Code.** The National Voter Registration Act of 1993, referred to in this section, is codified as 42 U.S.C. § 1973gg et seq.

**Cross References.** Filing deadline, § 7-7-203.

## RESEARCH REFERENCES

**ALR.** Validity, construction, and application of state criminal disenfranchisement provisions. 10 A.L.R.6th 31.

**U. Ark. Little Rock L. Rev.** Survey of

Legislation, 2003 Arkansas General Assembly, Election Law, Help America Vote Act, 26 U. Ark. Little Rock L. Rev. 398.

## CASE NOTES

### ANALYSIS

Constitutionality.

In General.

Authority of Secretary of State.

Filing Deadline.

General or Special Election.

Legislative Intent.

Political Party.

School Elections.

Vacancy in Nomination.

**Constitutionality.**

Deadlines for filing seven percent petitions previously required by this section and § 7-7-203 were unconstitutional as the petition provisions were too vague and indefinite to be enforced, and to judicially supply the needed definiteness would

have improperly involved the court in exercising legislative prerogatives. *American Party v. Jernigan*, 424 F. Supp. 943 (E.D. Ark. 1977) (decision prior to 1977 amendment).

Seven percent petition for the establishment of new political parties formerly required by this section was excessive, was not required to vindicate any legitimate state interest, and was unconstitutional. *American Party v. Jernigan*, 424 F. Supp. 943 (E.D. Ark. 1977) (decision prior to 1977 amendment).

This section is void for vagueness and violates the First and Fourteenth Amendments. *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

The conflict between the deadlines provisions in former subdivision (1)(B) of this section and former § 7-7-203(g) render both statutes unconstitutionally vague. *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

The individual statutory provisions set forth in former subdivision (1)(A) of this section and former § 7-7-203(g), as well as the combined effect of the statutes, place unreasonable burdens on plaintiffs seeking to establish a new political party, and those burdens are sufficiently severe to violate plaintiffs' rights under First Amendment guarantees of freedom of speech and freedom of association and Fourteenth Amendment guarantee of equal protection and the right to due process. *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

The combined effect of the early deadline of former § 7-7-203(g) in conjunction with the 3% requirement of former subdivision (1)(A) of this section places an unreasonable burden of federally protected constitutional rights. *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

Subdivision (21)(C) of this section, which decertified for ballot access purposes political parties that failed to obtain 3% of the vote in gubernatorial and presidential races, did not impose a severe burden on a political organization's First Amendment associational rights; the organization was free to nominate and endorse candidates of its choice, convey its message to voters, and determine its own structure, and Arkansas provided many

alternative paths to the ballot. The state's regulatory interests in preventing ballot overcrowding, frivolous candidacies, and voter confusion justified the decertification requirement. *Green Party v. Martin*, — F.3d —, 2011 U.S. App. LEXIS 16365 (8th Cir. Aug. 9, 2011).

### **In General.**

A permanent injunctive order is issued against Secretary of State, to the effect that she officially recognize the formation of the Reform Party. *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

### **Authority of Secretary of State.**

The Secretary of State, as the chief elections official for the State of Arkansas, is empowered by this section with the exclusive authority to recognize the formation of new political parties; however, this also means that former subdivision (1)(A) permits the Secretary of State to exercise unbridled and unreviewable discretion in her determination of the sufficiency of a new political party petition. *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

### **Filing Deadline.**

Under former subdivision (1)(B) of this section, the effective filing deadline in 1996 was May 7, while under former § 7-7-203(g), the effective filing deadline for 1996 was January 2; the January 2 deadline of former § 7-7-203(g) was controlling. *Citizens to Establish a Reform Party v. Priest*, 325 Ark. 257, 926 S.W.2d 432 (1996).

### **General or Special Election.**

Subdivision (12) of this section defines "general or special elections" as elections involving only candidates or officials. *Garrett v. Andrews*, 294 Ark. 160, 741 S.W.2d 257 (1987), rehearing denied, 294 Ark. 160, 744 S.W.2d 386 (1988), cert. denied, *Andrews v. Adams*, 487 U.S. 1219, 108 S. Ct. 2873, 101 L. Ed. 2d 908 (1988).

### **Legislative Intent.**

Unlike in this section, the legislature did not intend to exempt presidential primaries from former § 7-7-203(g). *Citizens to Establish a Reform Party v. Priest*, 325 Ark. 257, 926 S.W.2d 432 (1996).

### **Political Party.**

Because the presidential candidate for the Independent Party of Arkansas (IPA)



garnered 10.43% of the votes in Arkansas's 1992 November General Election, the IPA is a qualified political party under former subdivision (1)(A) of this section. *Lewis v. West*, 318 Ark. 334, 885 S.W.2d 663 (1994).

State official's motion for summary judgment was granted because a statutory scheme like Arkansas's that discriminated between parties with substantial community support and those without it, based on election performance and a viable petition option, was neither unreasonable nor invidiously discriminatory. Subdivision (21) of this section, as tempered by § 7-7-205, was reasonable, not invidiously discriminatory, and justified by Arkansas's important regulatory interests in being a good steward of its elections. *Green Party of Ark. v. Daniels*, 733 F. Supp. 2d 1055 (E.D. Ark. 2010).

#### **School Elections.**

Partisan selection of judges and clerks for elections does not apply to school district elections, since school elections are not general or special elections. *Henley v. Goggins*, 250 Ark. 912, 467 S.W.2d 697 (1971).

#### **Vacancy in Nomination.**

Subdivision (25) of this section only defines the term "vacancy in nomination" — it in no way empowers political committees with a procedure to cause or create a vacancy. *Ivy v. Republican Party*, 318 Ark. 50, 883 S.W.2d 805 (1994).

The General Assembly has provided no procedure for state and county party committees or conventions to make a judicial determination concerning whether a party nominee should be certified; to do so means the party officials would investigate, make factual determinations and determine whether those factual findings constitute "other good and legal cause" under subdivision (25) of this section, an undertaking which requires a judicial tribunal, not a political one. *Ivy v. Republican Party*, 318 Ark. 50, 883 S.W.2d 805 (1994).

Because the reason (good and legal cause) for vacating a nomination is defined by state law, it is compelling that a judicial, rather than a political, determination be made as to whether the facts correctly invoke subdivision (25) of this section and its definitional standard. *Ivy v. Republican Party*, 318 Ark. 50, 883 S.W.2d 805 (1994).

When the trial court declared an election void, the trial court did not create a vacancy as defined in this section; where there was no valid election and no nomination, the electorate was left as if no election had been held. *Whitley v. Cranford*, 354 Ark. 253, 119 S.W.3d 28 (2003).

**Cited:** *Mears v. City of Little Rock*, 256 Ark. 359, 508 S.W.2d 750 (1974); *Spradlin v. Arkansas Ethics Comm'n*, 314 Ark. 108, 858 S.W.2d 684 (1993); *Tittle v. Woodruff*, 322 Ark. 153, 907 S.W.2d 734 (1995).

### **7-1-102. Work time to be scheduled for voting — Penalty.**

Each employer in the state shall schedule the work hours of employees on election days so that each employee will have an opportunity to exercise the right of franchise. Any employer who fails or refuses to comply with the provisions of this section shall upon conviction be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250).

**History.** Acts 1989, No. 545, § 1.

**Publisher's Notes.** Former § 7-1-102, concerning suspension of work on election day, was repealed by Acts 1987, No. 248,

§ 16. The section was derived from Acts 1969, No. 465, Art. 13, § 6; A.S.A. 1947, § 3-1306.

### **7-1-103. Miscellaneous misdemeanor offenses — Penalties.**

(a) The violation of any of the following shall be deemed misdemeanors punishable as provided in this section:



(1) It shall be unlawful for any person to appoint or offer to appoint anyone to any office or position of trust or for any person to influence, attempt to influence, or offer to influence the appointment, nomination, or election of any person to office in consideration of the support or assistance of the person for any candidate in any election in this state;

(2)(A)(i) It shall be unlawful for any public servant, as defined in § 21-8-402, to devote any time or labor during usual office hours toward the campaign of any other candidate for office or for the nomination to any office.

(ii) Devoting any time or labor during usual office hours toward the campaign of any other candidate for office or for the nomination to any office includes without limitation the gathering of signatures for a nominating petition.

(B) It shall be unlawful for any public servant, as defined in § 21-8-402, to circulate an initiative or referendum petition or to solicit signatures on an initiative or referendum petition in any public office of the state, county, or municipal governments of Arkansas or during the usual office hours or while on duty for any state agency or any county or municipal government in Arkansas.

(C) It shall be unlawful for any public servant, as defined in § 21-8-402, to coerce, by threats or otherwise, any public employee into devoting time or labor toward the campaign of any candidate for office or for the nomination to any office;

(3)(A) It shall be unlawful for any public servant, as defined in § 21-8-402, to use any office or room furnished at public expense to distribute any letters, circulars, or other campaign materials unless such office or room is regularly used by members of the public for such purposes without regard to political affiliation. It shall further be unlawful for any public servant to use for campaign purposes any item of personal property provided with public funds.

(B) As used in subdivision (a)(3)(A) of this section, "campaign materials" and "campaign purposes" refer to the campaign of a candidate for public office and not efforts to support or oppose a ballot measure;

(4) It shall be unlawful for any person to assess any public employee, as defined in § 21-8-402, for any political purpose whatever or to coerce, by threats or otherwise, any public employee into making a subscription or contribution for any political purpose;

(5) It shall be unlawful for any person employed in any capacity in any department of the State of Arkansas to have membership in any political party or organization that advocates the overthrow of our constitutional form of government;

(6) It shall be unlawful for any campaign banners, campaign signs, or other campaign literature to be placed on any cars, trucks, tractors, or other vehicles belonging to the State of Arkansas or any municipality, county, or school district in the state;

(7)(A)(i) All articles, statements, or communications appearing in any newspaper printed or circulated in this state intended or calcu-

lated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words "Paid Political Advertisement", "Paid Political Ad", or "Paid for by" the candidate, committee, or person who paid for the message.

(ii) Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer.

(B)(i) All articles, statements, or communications appearing in any radio, television, or any other electronic medium intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words:

(a) "Paid political advertisement" or "paid political ad"; or

(b) "Paid for by", "sponsored by", or "furnished by" the true sponsor of the advertisement.

(ii) Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer;

(8) [Repealed.]

(9)(A) No election official acting in his or her official capacity shall do any electioneering on any election day or any day on which early voting is allowed. Except as provided in subdivisions (a)(9)(B) and (C) of this section, no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the polling place on election day.

(B) During early voting days, no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever during early voting hours in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the early voting site nor engage in those activities with persons standing in line to vote whether within or without the courthouse.

(C) When the early voting occurs at a facility other than the county clerk's office, no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the polling place;

(10) No election official shall perform any of the duties of the position before taking and subscribing to the oath provided for in § 7-4-110;

(11) No person applying for a ballot shall swear falsely to any oath administered by the election officials with reference to his or her qualifications to vote;

(12) No person shall willfully cause or attempt to cause his or her own name to be registered in any other election precinct than that in which he or she is or will be before the next ensuing election qualified as an elector;

(13) During any election, no person shall remove, tear down, or destroy any booths or supplies or other conveniences placed in any booth or polling site for the purpose of enabling the voter to prepare his or her ballot;

(14) No person shall take or carry any ballot obtained from any election official outside of the polling room or have in his or her possession outside of the polling room before the closing of the polls any ballot provided by any county election commissioner;

(15) No person shall furnish a ballot to any elector who cannot read informing him or her that it contains a name or names different from those that are written or printed thereon or shall change or mark the ballot of any elector who cannot read so as to prevent the elector from voting for any candidate, act, section, or constitutional amendment as the elector intended;

(16) No election official or other person shall unfold a ballot or without the express consent of the voter ascertain or attempt to ascertain any vote on a ballot before it is placed in the ballot box;

(17) No person shall print or cause to be printed any ballot for any election held under this act with the names of the candidates appearing thereon in any other or different order or manner than provided by this act;

(18) No election official shall permit the vote of any person to be cast in any election precinct in this state in any election legally held in this state when the person does not appear in person at the election precinct and actually cast the vote. This subdivision (a)(18) shall not apply to persons entitled to cast absentee ballots;

(19)(A) No person shall vote or offer to vote more than one (1) time in any election held in this state, either in person or by absentee ballot, or shall vote in more than one (1) election precinct in any election held in this state.

(B) No person shall cast a ballot or vote in the preferential primary of one (1) political party and then cast a ballot or vote in the general primary of another political party in this state;

(20) No person shall:

(A) Vote, knowing himself or herself not to be entitled to vote;

(B) Vote more than once at any election or knowingly cast more than one (1) ballot or attempt to do so;

(C) Provide assistance to a voter in marking and casting the voter's ballot except as provided in § 7-5-310;



(D) Alter or attempt to alter any ballot after it has been cast;

(E) Add or attempt to add any ballot to those legally polled at any election either by fraudulently introducing it into the ballot box before or after the ballots have been counted or at any other time or in any other manner with the intent or effect of affecting the count or recount of the ballots;

(F) Withdraw or attempt to withdraw any ballot lawfully polled with the intent or effect of affecting the count or recount of the ballots;  
or

(G) In any manner interfere with the officials lawfully conducting the election or the canvass or with the voters lawfully exercising their right to vote at the election;

(21) No person shall make any bet or wager upon the result of any election in this state;

(22) No election official, poll watcher, or any other person in or out of this state in any primary, general, or special election in this state shall divulge to any person the results of any votes cast for any candidate or on any issue in the election until after the closing of the polls on the day of the election. The provisions of this subdivision (a)(22) shall not apply to any township or precinct in this state in which all of the registered voters therein have voted prior to the closing of the polls in those instances in which there are fifteen (15) or fewer registered voters in the precinct or township; and

(23) Any person, election official, county clerk, or deputy clerk who violates any provisions of the absentee voting laws, § 7-5-401 et seq., shall be punished as provided in this section.

(b)(1) Except, as otherwise provided, the violation of any provision of this section shall be a Class A misdemeanor.

(2)(A) Any person convicted under the provisions of this section shall thereafter be ineligible to hold any office or employment in any of the departments in this state.

(B)(i) If any person is convicted under the provisions of this section while employed by any of the departments of this state, he or she shall be removed from employment immediately.

(ii) If any person is convicted under the provisions of this section while holding public office, the conviction shall be deemed a misfeasance and malfeasance in office and shall subject the person to impeachment.

(c) Any violation of this act not covered by this section and § 7-1-104 shall be considered a Class A misdemeanor and shall be punishable as such.

**History.** Acts 1969, No. 465, Art. 11, § 4; 1970 (Ex. Sess.), No. 3, § 1; 1971, No. 261, § 24; 1981, No. 327, § 1; A.S.A. 1947, § 3-1104; Acts 1987, No. 395, § 1; 1989, No. 505, § 2; 1991, No. 241, § 2; 1991, No. 786, § 4; 1995, No. 497, § 1; 1995, No. 1085, § 1; 1997, No. 445, § 2; 1997, No. 1121, § 1; 1999, No. 553, § 1; 1999, No. 1525, § 1; 2001, No. 795, § 1; 2001, No. 926, § 1; 2001, No. 1839, § 1; 2005, No. 1284, § 1; 2007, No. 221, § 1; 2009, No. 310, § 1; 2009, No. 473, § 1; 2009, No. 658, § 1; 2011, No. 721, § 1.

**A.C.R.C. Notes.** Pursuant to § 1-2-

207, the amendment of subdivision (a)(9) by Acts 1997, No. 445 is deemed to be superseded by its amendment by Acts 1997, No. 1121. Acts 1997, No. 445 amended (a)(9) to read as follows: "(a)(9) No person shall willfully disturb or engage in riotous conduct at or near any polling site with the intent or effect of disturbing or interfering with the access of the electors to the polling site."

**Amendments.** The 2007 amendment added (a)(2)(C) and (a)(3)(B) and made related changes; inserted "or school district" in (a)(6); and made stylistic changes.

The 2009 amendment by No. 310 inserted (a)(7)(B) and redesignated the re-

maining subdivisions accordingly; deleted "or on radio, television, or any other electronic medium" in (a)(7)(A)(i), and made a related change.

The 2009 amendment by No. 473 inserted (a)(2)(A)(ii).

The 2009 amendment by No. 658 inserted (a)(20)(C) and redesignated the remaining subdivisions accordingly.

The 2011 amendment added "or 'Paid for by' the candidate, committee, or person who paid for the message" to the end of (a)(7)(A)(i).

**Meaning of "this act".** See note to § 7-1-101.

## RESEARCH REFERENCES

**Ark. L. Rev.** Official Misconduct under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.

Comments: Removal and Discipline of Judges in Arkansas, Porter, 32 Ark. L. Rev. 545.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2005 Arkansas General Assembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.

## CASE NOTES

### ANALYSIS

Betting on Elections.

Electioneering.

Unlawful Voting.

### Betting on Elections.

One making a bet on the result of a primary election to nominate a candidate for sheriff is entitled to recover the amount of the wager deposited with the stakeholder, where he requested its return before it was paid over to the winner. *Williams v. Kagy*, 176 Ark. 484, 3 S.W.2d 332 (1928); *Sicard v. Williams*, 181 Ark. 1147, 29 S.W.2d 673 (1930) (decision under prior law).

A strong case for recount of votes was made in an election contest hearing where the losing contestant proved that an election judge bet on the outcome. *Wood v. Brown*, 235 Ark. 500, 361 S.W.2d 67 (1962) (decision under prior law).

### Electioneering.

An election judge has no right to campaign for his candidate at the polling booth. *Phillips v. Melton*, 222 Ark. 162, 257 S.W.2d 931 (1953) (decision under prior law).

Enforcement of subdivision (9) of this section by the collection of campaign literature from voters in the polling place was not a violation of former § 7-5-608 where voters were not prohibited from carrying voting aids into the polling place. *McGruder v. Phillips County Election Comm'n*, 850 F.2d 406 (8th Cir. 1988).

### Unlawful Voting.

In a prosecution for unlawful voting or alteration of ballots, the evidence must show some animus or fraudulent intent on the part of the accused before he can be adjudged guilty. *Williams v. State*, 222 Ark. 458, 261 S.W.2d 263 (1953) (decision under prior law).

Trial court did not abuse its discretion in ruling that a voter voted twice and that his votes for appellant in an election result challenge should have been excluded where there was sufficient evidence to show that the voter voted twice because the county clerk produced an absentee ballot cast by the voter, as well as a sign-in sheet from the polls that indicated that he voted a second time at the polls. *Tate-Smith v. Cupples*, 355 Ark. 230, 134 S.W.3d 535 (2003).

**Cited:** *Garionis v. Newton*, 827 F.2d

306 (8th Cir. 1987); Westark Christian Action Council v. Stodola, 312 Ark. 249, 848 S.W.2d 935 (1993) (decision under prior law).  
Action Council v. Stodola, 311 Ark. 449, 843 S.W.2d 318 (1993); Westark Christian

### **7-1-104. Miscellaneous felonies — Penalties.**

(a) The following offenses shall be deemed felonies punishable as provided in this section:

(1) No person shall falsely make or fraudulently destroy any certificate of nominations or any part thereof, file any certificate of nominations knowing the certificate or any part thereof to be false, suppress any nomination or any part thereof which has been filed, or forge or falsely write the name or initials of any election official on any ballot;

(2) No public official or other person shall in any manner willfully or corruptly permit any person not entitled to register for the purpose of voting to register, nor shall a public official or other person forge or attempt to forge a registration;

(3) No person shall vote in any election in the state unless the person is a qualified elector of this state and has registered to vote in the manner provided by law;

(4) It shall be unlawful for any person to offer, accept, receive, or pay any person any money, goods, wares, or merchandise or solicit any money, goods, wares, or merchandise for the purpose of influencing his or her vote during the progress of any election in this state;

(5) It shall be unlawful for any person to make any threat or attempt to intimidate any elector or the family, business, or profession of the elector;

(6) It shall be unlawful for any person to interfere with or to prevent any qualified elector from voting at any election or to attempt to interfere with or to prevent any qualified elector from voting at any election, provided that this subdivision (a)(6) shall not prohibit good faith challenges of ballots or voters according to law by candidates, authorized representatives of candidates, political parties, or ballot issues;

(7) It shall be unlawful for any person to attend any polling site on election day and hand out or give away any campaign cards, placards, or other articles for the purpose of influencing the electors to vote for any candidate, except in the manner now provided by law;

(8)(A) It shall be unlawful for a person with the intent to defraud a voter or an election official to possess an absentee ballot issued to another.

(B) The possession by a person of more than ten (10) absentee ballots creates a rebuttable presumption of intent to defraud.

(C) The presumption under subdivision (a)(8)(B) of this section does not apply to:

(i) An employee of the United States Postal Service performing the normal course of the employee's authorized duties;

(ii) A common or contract carrier performing the normal course of the carrier's authorized duties;



(iii) The administrative head of a long-term care or residential care facility licensed by the state authorized by a voter under Arkansas law; or

(iv) An election official acting in his or her official capacity;

(9) No person shall tamper with a voting machine or fraudulently affect or attempt to affect its results;

(10) No person may cast a ballot in more than one (1) party primary election on the same day in this state or for candidates for more than one (1) political party;

(11) No person shall vote in any election more than one (1) vote;

(12) No person shall vote or attempt to vote other than his or her legal ballot;

(13) No election official shall knowingly permit any person to vote other than his or her legal ballot in any election;

(14) No election official or other person shall fraudulently permit any person to vote illegally, refuse the vote of any qualified elector, or cast up or make a false return of any election;

(15) No election official or other person shall willfully make a false count of any election ballots or falsely or fraudulently certify the returns of any election;

(16) No person shall fraudulently change, alter, or obliterate the poll books or books of any election or break any seals upon any ballot box, voting machine, or stub box, except as authorized by law;

(17) No person shall contrive, alter, forge, counterfeit, detain, mutilate, steal, secrete, or destroy any election returns or election materials for the purpose of hindering or preventing or falsely reporting a tabulation or check of the returns; and

(18) Any person who violates the provisions of § 7-5-702 or who shall disclose how any voter may have voted unless compelled to do so in a judicial proceeding shall be deemed guilty of a Class D felony and punished as provided in this section.

(b)(1) Any person convicted of a felony as defined in this section shall be guilty of a Class D felony.

(2)(A) Any person convicted of a felony as defined in this section shall be barred from holding public office or employment in any of the departments of the state from the date of his or her conviction.

(B)(i) If the person is employed by any of the departments of this state at the time of his or her conviction, he or she shall be removed from employment immediately.

(ii) If any person is convicted under the provisions of this section while holding public office, the conviction shall be deemed a misfeasance and malfeasance in office and shall subject the person to impeachment.

**History.** Acts 1969, No. 465, Art. 11, § 5; A.S.A. 1947, § 3-1105; Acts 1995, No. 497, § 1; 1995, No. 1085, § 1; 1997, No. 445, § 3; 1999, No. 655, § 1; 2001, No. 1553, § 17; 2003, No. 1458, § 1; 2005, No. 1677, § 1; 2009, No. 658, § 2.

**Amendments.** The 2009 amendment inserted (a)(8) and redesignated the remaining subdivisions accordingly.

## RESEARCH REFERENCES

**Ark. L. Rev.** Comments: Removal and Discipline of Judges in Arkansas, Porter, 32 Ark. L. Rev. 545.

**U. Ark. Little Rock L.J.** Seventeenth

Annual Survey of Arkansas Law — Miscellaneous, 17 U. Ark. Little Rock L.J. 452.

## CASE NOTES

### ANALYSIS

False Count or Certificate.  
Subpoena of Bank Records.  
Suppressing Nomination.  
Unofficial Ballots.

### False Count or Certificate.

The offenses of “falsifying returns” and “making a false count” are separate and distinct. *Kelly v. State*, 102 Ark. 651, 145 S.W. 556 (1912) (decision under prior law).

Indictment need not allege that false certificate was delivered to the election commissioners, since delivery is not necessary; the offense is complete when a false certificate is made out and signed. *State v. Doughty*, 134 Ark. 435, 204 S.W. 968 (1918) (decision under prior law).

Indictment need not set forth particular manner in which wrongful result was brought about, whether by a false count and certificate of the ballots or whether by a correct count and a false certificate as to the result obtained by the count. *State v. Doughty*, 134 Ark. 435, 204 S.W. 968 (1918) (decision under prior law).

### Subpoena of Bank Records.

A prosecuting attorney investigating a suspected election law violation was not allowed to subpoena the bank records of a political party's checking account and thereby ascertain the identity of all contributors to the party's campaign and amounts of their contributions without a showing that the information was reasonably relevant to the investigation or that public interest in the disclosure of the information was sufficiently cogent and compelling to outweigh the legitimate and constitutionally protected interests of the

political party and its contributors in keeping that information private. *Pollard v. Roberts*, 283 F. Supp. 248 (E.D. Ark. 1968), *aff'd*, 393 U.S. 14, 89 S. Ct. 47 (1968) (decision under prior law).

### Suppressing Nomination.

An indictment was sufficient which charged that the petition of the necessary number of qualified electors was filed with the election commissioners and that the commissioners suppressed the nomination by failing and refusing to place on the official ballot the name of the candidate thus nominated. *State v. Hunter*, 134 Ark. 443, 204 S.W. 308 (1918) (decision under prior law).

### Unofficial Ballots.

Former statute making it a crime to print and distribute any ballots outside of those ballots ordered for use in an election did not violate U.S. Const., Amend. 14, as legislature was seeking only to prevent intimidation of voters by use of unofficial ballots and did not intend to prevent freedom of speech. *Branton v. State*, 214 Ark. 861, 218 S.W.2d 690 (1949), *cert. denied*, *Branton v. Arkansas*, 338 U.S. 878, 70 S. Ct. 155 (1949) (decision under prior law).

Former statute making it unlawful to print or distribute ballots not ordered for use in the election was violated when mimeographed lists of candidates, not officially designated as official ballots, were distributed at a political meeting and people at the meeting were told to mark those lists in a certain way. *Branton v. State*, 214 Ark. 861, 218 S.W.2d 690 (1949), *cert. denied*, *Branton v. Arkansas*, 338 U.S. 878, 70 S. Ct. 155 (1949) (decision under prior law).

**7-1-105. Majority of qualified electors.**

Whenever any law of this state shall require that a proposition or question shall be adopted by a majority of the qualified electors of this state, of a city, or of a county based on the total number of electors of the state, city, or county, appearing on the certified list of all qualified electors thereof, the majority required for the adoption of the proposition or question hereafter shall be deemed to be the majority of the qualified electors of the state, city, or county voting on the proposition or question at the election.

**History.** Acts 1969, No. 465, Art. 13, § 3; A.S.A. 1947, § 3-1303; Acts 1997, No. 445, § 4.

**7-1-106. Election laws expert.**

The Secretary of State shall designate at least one (1) member of his or her staff to become knowledgeable of the election laws as they pertain to elections in the State of Arkansas for the purpose of answering procedural questions concerning elections and to aid the candidates and their agents in filing for election.

**History.** Acts 1977, No. 312, § 8; A.S.A. 1947, § 3-1314.

**7-1-107. [Repealed.]**

**Publisher's Notes.** This section, concerning independent candidates for municipal office, was repealed by Acts 1997, No. 445, § 5. The section was derived from Acts 1985, No. 545, § 1; A.S.A. 1947, § 19-956.

**7-1-108. Election law deadlines.**

If an election law deadline occurs on a Saturday, Sunday, or legal holiday, the deadline shall be the next day which is not a Saturday, Sunday, or legal holiday.

**History.** Acts 1999, No. 653, § 1. amended by Acts 1999, No. 654, § 1, Acts 2003, No. 995, § 3, and Acts 2005, No. 1952, § 1.  
**A.C.R.C. Notes.** Identical language appears at Ark. Const., Amend. 51, § 9(1) as

**7-1-109. Enforcement of election laws.**

Following a written complaint concerning any election law violation or irregularity to the county board of election commissioners, the written complaint shall be sent by the county board to the appropriate county clerk and appropriate prosecuting attorney for evaluation.

**History.** Acts 2003, No. 270, § 1.



RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Election Law, Complaints Concerning Election Law Violations, 26 U. Ark. Little Rock L. Rev. 397.

Survey of Legislation, 2003 Arkansas General Assembly, Election Law, Access to Voter Information through Internet, 26 U. Ark. Little Rock L. Rev. 403.

7-1-110. Voting information on Internet website.

The Secretary of State shall provide on his or her Internet website a mechanism to allow a person to enter his or her home address and retrieve information concerning the person's polling location, precinct, state representative, and state senator.

**History.** Acts 2003, No. 1167, § 1.

State's website address is [www.sos.arkansas.gov](http://www.sos.arkansas.gov).

**Publisher's Notes.** The Secretary of

CHAPTER 2

CONGRESSIONAL DISTRICTS

SECTION.

7-2-101. Number of congressional districts.

7-2-102. First Congressional District.

SECTION.

7-2-103. Second Congressional District.

7-2-104. Third Congressional District.

7-2-105. Fourth Congressional District.

**A.C.R.C. Notes.** Acts 2001, No. 1840, § 6, provided: "If any provision of section 2, 3, 4 or 5 of this act is held invalid by any court of competent jurisdiction, sections 2 through 5 of this act shall be void and Arkansas Code 7-2-102 through 7-2-105 shall be repealed and the congressional districts of this state shall be as follows:

"(1) The First Congressional District shall be composed of the counties of: Arkansas; Baxter; Clay; Cleburne; Craighead; Crittenden; Cross; Fulton; Greene; Independence; Izard; Jackson; Lawrence; Lee; Lonoke; Mississippi; Monroe; Phillips; Prairie; Poinsett; Randolph; St. Francis; Searcy; Sharp; Stone; and Woodruff; and the qualified electors residing therein shall elect one (1) member of the House of Representatives of the United States;

"(2) The Second Congressional District shall be composed of the counties of: Conway; Faulkner; Perry; precincts 20, 24, 56, and 57 of Pope County; Pulaski; Saline; Van Buren; White; and Yell; and the qualified electors residing therein shall elect one (1) member of the House of Representatives of the United States;

"(3) The Third Congressional District shall be composed of the following counties or parts of counties: Benton; Boone; Carroll; Crawford; Franklin (except precincts 20, 23, 24, 26, and 28); Johnson; Madison; Marion; Newton; Pope (except precincts 20, 24, 56, and 57); Sebastian; and Washington; and the qualified electors residing therein shall elect one (1) member of the House of Representatives of the United States; and

"(4) The Fourth Congressional District shall be composed of the following counties or parts of counties: Ashley; Bradley; Calhoun; Chicot; Clark; Cleveland; Columbia; Dallas; Desha; Drew; precincts 20, 23, 24, 26, and 28 of Franklin County; Garland; Grant; Hempstead; Hot Spring; Howard; Jefferson; Lafayette; Little River; Lincoln; Logan; Miller; Montgomery; Nevada; Ouachita; Pike; Polk; Scott; Sevier; and Union; and the qualified electors residing therein shall elect one (1) member of the House of Representatives of the United States."

## CASE NOTES

## ANALYSIS

Constitutionality.  
Burden of Proof.  
Voting Rights Act.

**Constitutionality.**

The General Assembly did not violate the Fourteenth and Fifteenth Amendments of the U.S. Constitution, nor did it intend to discriminate against black plaintiffs by enacting Act 1220 of 1991. *Turner v. Arkansas*, 784 F. Supp. 553 (E.D. Ark. 1991).

Act 1220 of 1991 does not have the effect of discriminating against black voters or diluting or diminishing their influence. *Turner v. Arkansas*, 784 F. Supp. 553 (E.D. Ark. 1991).

**Burden of Proof.**

Plaintiffs bear the burden of showing that differences among congressional districts can be avoided, and if plaintiffs meet that burden defendants bear the burden of proving that each significant variance between districts is necessary to achieve some legitimate goal. *Turner v. Arkansas*, 784 F. Supp. 553 (E.D. Ark. 1991).

**Voting Rights Act.**

The reapportionment plan established by Act 1220 of 1991 does not violate Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, as amended in 1982. *Turner v. Arkansas*, 784 F. Supp. 553 (E.D. Ark. 1991).

**7-2-101. Number of congressional districts.**

The State of Arkansas is hereby divided into four (4) congressional districts, provided that the members of the House of Representatives of the United States Congress presently serving from each of the existing congressional districts of this state shall continue to serve until the expiration of their current terms, and successor congressmen shall be elected from the congressional districts as established in this subchapter. It is the intention of this subchapter to provide for congressional districts of substantially equal population in order to comply with the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

**History.** Acts 1991, No. 1220, § 1; 2001, No. 1840, § 1.

**7-2-102. First Congressional District.**

(a) The First Congressional District shall be composed of:

(1) The counties of Arkansas, Baxter, Chicot, Clay, Cleburne, Craighead, Crittenden, Cross, Desha, Fulton, Greene, Independence, Izard, Jackson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Prairie, Poinsett, Randolph, St. Francis, Sharp, Stone, and Woodruff;

(2) The following voting districts of Jefferson County as they existed on January 1, 2011:

- (A) 19 (Dunnington) voting district;
- (B) P15 (Dudley Lake) voting district;
- (C) 25 (Old River) voting district;

- (D) 57 (Villemont) voting district;
- (E) P91 (Roberts) voting district;
- (F) P851 (Humphrey) voting district; and
- (G) P862 (Humphrey) voting district; and

(3) The voting districts and voting precincts of Searcy County as they existed on January 1, 2011, that are not listed under § 7-2-104(a)(4).

(b) The qualified electors residing in the counties and portion of Jefferson County and Searcy County listed under subsection (a) of this section shall elect one (1) member of the House of Representatives of the United States.

**History.** Acts 1991, No. 1220, § 2; 2001, No. 1840, § 2; 2011, No. 1241, § 1; 2011, No. 1242, § 1.

**Amendments.** The 2011 amendment by identical acts Nos. 1241 and 1242, in

present (a)(1), inserted "Chicot," "Desha," and "Lincoln," and deleted "Searcy" following "St. Francis"; inserted (a)(2) and (a)(3); and rewrote and redesignated present (b).

### 7-2-103. Second Congressional District.

(a) The Second Congressional District shall be composed of the counties of Conway, Faulkner, Perry, Pulaski, Saline, Van Buren, and White.

(b) The qualified electors residing in the counties listed under subsection (a) of this section shall elect one (1) member of the House of Representatives of the United States.

**History.** Acts 1991, No. 1220, § 3; 2001, No. 1840, § 3; 2011, No. 1241, § 1; 2011, No. 1242, § 1.

**Amendments.** The 2011 amendment by identical acts Nos. 1241 and 1242 de-

leted "and Yell" following "White" in present (a)(1); and substituted "in the counties listed under subsection (a) of this section" for "therein" in present (b).

### 7-2-104. Third Congressional District.

(a) The Third Congressional District shall be composed of:

(1) The counties of Benton, Boone, Carroll, Marion, Pope, and Washington;

(2) The voting districts and voting precincts of Crawford County as they existed on January 1, 2011, that are not listed under § 7-2-105(a)(2);

(3) The following voting districts of Newton County as they existed on January 1, 2011:

- (A) Big Creek voting district;
- (B) Dogpatch voting district;
- (C) Grove voting district;
- (D) Hasty voting district;
- (E) Polk voting district;
- (F) Richland voting district; and
- (G) White voting district;

(4) The Prairie voting district of Searcy County as it existed on January 1, 2011; and



(5) The voting districts and voting precincts of Sebastian County as they existed on January 1, 2011, that are not listed under § 7-2-105(a)(5).

(b) The qualified electors residing in the counties and portions of Crawford County, Newton County, Searcy County, and Sebastian County listed under subsection (a) of this section shall elect one (1) member of the House of Representatives of the United States.

**History.** Acts 1991, No. 1220, § 4; 2001, No. 1840, § 4; 2011, No. 1241, § 1; 2011, No. 1242, § 1.

**Amendments.** The 2011 amendment by identical acts Nos. 1241 and 1242, in present (a)(1), deleted "Crawford, Frank-

lin, Johnson, Madison" following "Carroll," deleted "Newton" following "Marion," and deleted "Sebastian" following "Pope"; inserted (a)(2) through (a)(5); and rewrote and redesignated present (b).

### **7-2-105. Fourth Congressional District.**

(a) The Fourth Congressional District shall be composed of:

(1) The counties of Ashley, Bradley, Calhoun, Clark, Cleveland, Columbia, Dallas, Drew, Franklin, Garland, Grant, Hempstead, Hot Spring, Howard, Johnson, Lafayette, Little River, Logan, Madison, Miller, Montgomery, Nevada, Ouachita, Pike, Polk, Scott, Sevier, Union, and Yell;

(2) The following voting districts of Crawford County as they existed on January 1, 2011:

- (A) Alma # 1 voting district;
- (B) Alma # 4 voting district;
- (C) Bidville voting district;
- (D) Chester voting district;
- (E) Dean Springs voting district;
- (F) Dyer voting district;
- (G) Eagle Crest voting district;
- (H) Kibler voting district;
- (I) Locke voting district;
- (J) Mountain voting district;
- (K) Mulberry # 1 voting district;
- (L) Mulberry # 2 voting district;
- (M) Mulberry # 3 voting district;
- (N) Porter voting district;
- (O) Vine Prairie voting district;
- (P) Whitley voting district; and
- (Q) Winfrey voting district;

(3) The voting districts and voting precincts of Jefferson County as they existed on January 1, 2011, that are not listed under § 7-2-102(a)(2);

(4) The voting districts and voting precincts of Newton County as they existed on January 1, 2011, that are not listed under § 7-2-104(a)(3); and

(5) The following voting districts of Sebastian County as they existed on January 1, 2011:

- (A) 9-1-A voting district;
- (B) 9-1-B voting district;
- (C) 9-1-C voting district;
- (D) 9-1-D voting district;
- (E) 9-1-E voting district;
- (F) 9-1-Q voting district;
- (G) 9-2-E voting district;
- (H) 9-3-E voting district;
- (I) 9-3-F voting district;
- (J) 9-3-G voting district;
- (K) 9-3-H voting district;
- (L) 9-3-I voting district;
- (M) 9-3-J voting district;
- (N) 9-3-K voting district;
- (O) 9-3-L voting district; and
- (P) 9-3-M voting district.

(b) The qualified electors residing in the counties and portions of Crawford County, Jefferson County, Newton County, and Sebastian County listed under subsection (a) of this section shall elect one (1) member of the House of Representatives of the United States.

**History.** Acts 1991, No. 1220, § 5; 2001, No. 1840, § 5; 2011, No. 1241, § 1; 2011, No. 1242, § 1.

**Amendments.** The 2011 amendment by identical acts Nos. 1241 and 1242, in present (a)(1), deleted "Chicot" following "Calhoun," deleted "Desha" following

"Dallas," deleted "Jefferson" following "Howard," deleted "Lincoln" following "Little River," and inserted "Franklin," "Johnson," "Madison," and "and Yell"; inserted (a)(2) through (a)(5); and rewrote and redesignated present (b).

## CHAPTER 3

### POLITICAL PARTIES

#### SECTION.

- 7-3-101. Duties and powers.
- 7-3-102. National committee members.
- 7-3-103. State committee members.
- 7-3-104. County committee members.
- 7-3-105. County convention delegates — Selection — Vacancy.
- 7-3-106. County convention — Primary election results — Selec-

#### SECTION.

- tion of state and national delegates — Vacancies.
- 7-3-107. State convention — Declaration of election results and nominees — Certificates.
- 7-3-108. Subversive parties — New parties — Affidavit required — Penalty.

**Cross References.** Filing for ballot position, § 7-7-304.

**Effective Dates.** Acts 1969, No. 465, Art. 13, § 10: approved Apr. 17, 1969. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the present election laws are ancient and out-

dated in part and have caused and are causing much confusion and controversy, that there are particular problem areas in the present law which need immediate legislation in order to resolve same, that elections are and will continue to be held and conducted in this atmosphere of confusion and controversy until these prob-

lem areas are resolved and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in force and effect from and after its passage.”

Acts 1995, No. 901, § 21: Apr. 4, 1995. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the state

should provide for a state supported political primary system; and that this act should become effective immediately for the proper administration of this act. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

## RESEARCH REFERENCES

**Am. Jur.** 25 Am. Jur. 2d, Elections, § 116 et seq.

**Ark. L. Notes.** Cihak and Springman, HAVA and Arkansas Election Law Re-

form: Compliance and Promise, 2006 Arkansas L. Notes 1.

**C.J.S.** 29 C.J.S., Elections, § 83 et seq.

## CASE NOTES

### In General.

Arkansas law provides two means of forming a new political party: the convention process, which permits a political group to hold a convention to choose presidential candidates; or the petition process,

which permits a political group to declare its intent to organize a political party. *Citizens to Establish a Reform Party v. Priest*, 325 Ark. 257, 926 S.W.2d 432 (1996).

## 7-3-101. Duties and powers.

Subject to the provisions of this act and other applicable laws of this state, organized political parties shall:

- (1) Have the right to prescribe the qualifications of their own membership;
- (2) Prescribe the qualifications for voting in their party primaries; and
- (3) Establish rules and procedures for their own organization.

**History.** Acts 1969, No. 465, Art. 1, § 2; 1971, No. 261, § 2; A.S.A. 1947, § 3-102; Acts 1995, No. 901, § 1.

**Meaning of “this act”.** Acts 1969, No. 465, codified as §§ 7-1-101, 7-1-103 — 7-1-105, 7-3-101 — 7-3-108, 7-4-101 — 7-4-105, 7-4-107 — 7-4-112, 7-5-101, 7-5-102, 7-5-103 [repealed], 7-5-202 — 7-5-209, 7-5-210 [repealed], 7-5-211, 7-5-301, 7-5-302 [repealed], 7-5-303 [repealed], 7-5-304 — 7-5-306, 7-5-307 [repealed], 7-5-308, 7-5-309, 7-5-312 [repealed], 7-5-313 [repealed], 7-5-314 — 7-5-319, 7-5-401, 7-5-402, 7-5-405 — 7-5-417, 7-5-501 [repealed], 7-5-502 — 7-5-504, 7-5-505 [repealed], 7-5-506 [repealed], 7-5-507, 7-5-

508 [repealed], 7-5-509, 7-5-511 [repealed], 7-5-512, 7-5-513, 7-5-514 [repealed], 7-5-515 — 7-5-518, 7-5-519 [repealed], 7-5-520 — 7-5-522, 7-5-524 — 7-5-531, 7-5-701 — 7-5-706, 7-5-801 — 7-5-809, 7-6-101 — 7-6-105, 7-7-101 — 7-7-105, 7-7-201 — 7-7-203, 7-7-301 — 7-7-307, 7-7-309, 7-7-310 [repealed], 7-7-401, 7-7-402, 7-7-403 [repealed], 7-8-101 — 7-8-104, 7-8-301, 7-8-302, 7-8-304 — 7-8-307, 25-16-801.

Acts 1995, No. 901, codified as §§ 7-3-101, 7-7-201 — 7-7-203, 7-7-301 — 7-7-306, 7-7-308, 7-7-309, 7-7-310 [repealed], 7-7-311 [repealed], 7-7-312 [repealed], 7-7-401.



## CASE NOTES

## ANALYSIS

Constitutionality.  
 Election Expenses.  
 Qualification of Candidates.

**Constitutionality.**

Requiring that political parties both conduct and pay for primary elections as a condition of access to the general election ballot is unconstitutional; the combined effect of § 7-7-102(a) and former § 7-3-101(4) impermissibly burdens the First and Fourteenth Amendment associational rights of voters. *Republican Party v. Faulkner County*, 49 F.3d 1289 (8th Cir. 1995).

**Election Expenses.**

Former subdivision (4) of this section is not invalid since primary elections are

part of the state's election machinery and may therefore be paid for with public money. *Moorman v. Pulaski County Democratic Party*, 271 Ark. 908, 611 S.W.2d 519 (1981).

**Qualification of Candidates.**

Arkansas law is well settled that the party chairman and secretary do not have the judicial authority to determine that a candidate is ineligible to hold public office, nor can they refuse to place the candidate's name upon the ballot. *Ivy v. Republican Party*, 318 Ark. 50, 883 S.W.2d 805 (1994).

**7-3-102. National committee members.**

The national committeeman and national committeewoman of political parties of this state shall be selected in the manner provided in the party rules of the respective political parties in this state.

**History.** Acts 1969, No. 465, Art. 1, § 2; A.S.A. 1947, § 3-102.

**7-3-103. State committee members.**

(a) The members of the state committee of political parties in this state shall be elected by the respective state conventions.

(b) Caucuses by delegates to the state conventions for the purpose of recommending members of the state committee shall be held at a definite time and place to be announced publicly by the temporary chair of the state convention convened at the first session of the convention. The temporary chair shall appoint some delegate to convene each caucus. If any delegation from a county shall notify the chair of the convention that a caucus has been held and a recommendation made without a county delegation having had timely notice of and an opportunity to be present at the caucus, the chair of the convention shall at once order a new caucus.

(c) The term of office of the members of a state committee shall begin from their election, and they shall hold office until the next convention and until their successors are elected and qualified.

**History.** Acts 1969, No. 465, Art. 1, § 2; 1971, No. 261, § 2; A.S.A. 1947, § 3-102.

**7-3-104. County committee members.**

(a)(1) The members of the county committee of political parties from each election precinct, township, or city ward shall be elected by a majority vote of those votes cast for each membership position at the primary elections held by the political party.

(2)(A) Except as provided in subdivision (a)(2)(B) of this section, the county board of election commissioners shall place on the ballot of the primary election the names of all persons seeking election as members of the county committee who have filed a written pledge to abide by the results of the primary, if any is required by the rules of the political party, and who have paid the filing fee, if any, assessed therefor.

(B) When only one (1) candidate qualifies for a particular position on the county committee, the candidate's name shall be omitted from the ballot and the candidate shall be selected to serve in the particular position in the same manner as if the position had been voted upon at the primary election.

(3) If candidates for any county committee membership positions have not qualified as provided in this section within the time required for candidates to qualify, the county committee shall select candidates for committee members at any public meeting of the county committee held after the ticket has closed and prior to the time the primary election ballots are printed.

(4) Vacancies in the county committee shall be filled by the county committee.

(b)(1) Each person elected or appointed the county chair of the county committee of a political party shall notify the state chair of the respective party in writing within ten (10) days after his or her election or appointment.

(2)(A) It shall be the duty of the state party chair to keep on file with the Secretary of State a complete list of the county chairs and to notify promptly the Secretary of State of any death, resignation, disqualification, or vacancy in the office of any county chair and of the election of a new chair to fill vacancies thus created.

(B) Upon receipt of that information, the Secretary of State shall record the information, which shall be a public record.

**History.** Acts 1969, No. 465, Art. 1, § 3; A.S.A. 1947, § 3-103; Acts 1997, No. 444, § 1; 2005, No. 67, § 1; 2007, No. 222, § 2.

**Amendments.** The 2007 amendment deleted (c) relating to election officials.

**7-3-105. County convention delegates — Selection — Vacancy.**

(a) Delegates from each election precinct, township, or city ward to the county convention of political parties shall be selected at the primary election held by each party.

(b) The county committee shall place on the ballot of the primary election the names of all persons seeking election as a county convention delegate who shall have filed a written pledge to abide by the



results of the primary, if any is required by the rules of the political party, and shall have paid the ballot fee, if any, assessed therefor.

(c) If candidates for county convention delegates have not qualified as herein provided within the time required for candidates to qualify, the county committee shall select candidates or delegates to the county convention at any public meeting of the committee held after the ticket has closed and prior to the time the primary election ballots are printed.

(d) Any vacancies existing or occurring in any of the positions of delegates after the primary election or elections have been held may be filled by the county committee.

**History.** Acts 1969, No. 465, Art. 1, § 4;  
A.S.A. 1947, § 3-104.

### CASE NOTES

#### Ballot Fee.

County central committee could not refuse to place on ballots names of candidates for township committeemen on ground that ballot fees had not been paid

by date set by regulation of the central committee, since that regulation would have nullified statute. *Stock v. Harris*, 193 Ark. 114, 97 S.W.2d 920 (1936) (decision under prior law).

### 7-3-106. County convention — Primary election results — Selection of state and national delegates — Vacancies.

(a) Each political party holding a primary election shall at the time required in § 7-7-203(f) hold a county convention composed of delegates elected at the primary election in each township and ward.

(b)(1) The county convention shall receive from the county board of election commissioners a list of all nominated candidates for county, township, and municipal offices and the political party's county committee members and delegates and select delegates and alternates to all conventions held by the political party.

(2) However, the state committee of the political party may make rules for the election of delegates to the national convention of the political party, and the delegates may be elected before the primary elections.

(c)(1) Vacancies in the delegation to a convention arising from death, absence, resignation, or ineligibility shall be filled by the alternates in the order of their selection.

(2) In the absence of alternates, vacancies shall be filled by the remaining members of the delegation.

**History.** Acts 1969, No. 465, Art. 1, § 4;  
A.S.A. 1947, § 3-104; Acts 1997, No. 444,  
§ 2.

**7-3-107. State convention — Declaration of election results and nominees — Certificates.**

After a primary election for the selection of nominees for United States, state, or district offices, each political party shall hold a state convention following the biennial general primary election for the purpose of:

(1) Receiving from the Secretary of State the certification of the election results for all United States, state, and district offices. Each party shall furnish to each successful nominee a certificate of nomination; and

(2) Performing other duties as may be required by party rules or by law.

**History.** Acts 1969, No. 465, Art. 1, § 2; 1971, No. 261, § 2; A.S.A. 1947, § 3-102; Acts 1997, No. 444, § 3.

**7-3-108. Subversive parties — New parties — Affidavit required — Penalty.**

(a) No political party shall be recognized, qualified to participate, or permitted to have the names of its candidates printed on the ballot in any election in this state that:

(1) Either directly or indirectly advocates, teaches, justifies, aids, or abets the overthrow by force or violence, or by any unlawful means, of the government of the United States or this state, or an act of terrorism as defined by § 5-54-205; or

(2) Directly or indirectly carries on, advocates, teaches, justifies, aids, or abets a program of sabotage, force and violence, sedition, or treason against the government of the United States or this state.

(b)(1) No newly organized political party shall be recognized, qualified to participate, or permitted to have the names of its candidates printed on the ballot in any election in this state until it has filed an affidavit, by the officers of the party in this state under oath, that:

(A) It does not either directly or indirectly advocate, teach, justify, aid, or abet the overthrow by force or violence or by any unlawful means of the government of the United States or this state, or an act of terrorism as defined by § 5-54-205; or

(B) It does not directly or indirectly carry on, advocate, teach, justify, aid, or abet a program of sabotage, force and violence, sedition, or treason against the government of the United States or this state.

(2) The affidavit shall be filed with the Secretary of State.

(c) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor.

**History.** Acts 1969, No. 465, Art. 11, § 7; A.S.A. 1947, § 3-1107; Acts 1997, No. 444, § 4; 2001, No. 1553, § 18; 2005, No. 1994, § 484.

**Meaning of "this act".** See note to § 7-3-101.

### RESEARCH REFERENCES

**ALR.** Validity, construction, and application of state statutes governing "minor political parties". 120 A.L.R.5th 1.

### CASE NOTES

#### ANALYSIS

Constitutionality.  
Discretion of Secretary of State.  
Sufficiency of Evidence.

#### Constitutionality.

Former law outlawing the Communist Party was constitutional against contention that it denied the right of suffrage to a person or group of persons and denied them their right of freedom of the speech and freedom of the press. *Field v. Hall*, 201 Ark. 77, 143 S.W.2d 567 (1940) (decision under prior law).

#### Discretion of Secretary of State.

Under former law outlawing the Communist Party and imposing the duty upon the Secretary of State to determine whether a political party advocated the overthrow of the government by force or violence or carried on a program of sedition or treason, the discretion of the Secretary of State was subject to control by the courts if exercised arbitrarily and without information to justify his act. *Field v. Hall*, 201 Ark. 77, 143 S.W.2d 567 (1940) (decision under prior law).

Reviewing court could not say, as a matter of law, that the Secretary of State acted arbitrarily or abused his discretion in refusing to place the names of nominees of the Communist Party on the ballot without giving them a trial. *Field v. Hall*, 201 Ark. 77, 143 S.W.2d 567 (1940) (decision under prior law).

#### Sufficiency of Evidence.

In mandamus proceeding to compel Secretary of State to accept the certificates of nomination of the nominees of the Communist Party of Arkansas, evidence that it had adopted the constitution of the Communist Party of the United States which supported revolutionary movement against existing social and political order was sufficient to sustain finding that the party advocated the overthrow of local, state or national government. *Field v. Hall*, 201 Ark. 77, 143 S.W.2d 567 (1940) (decision under prior law).

**Cited:** *Republican Party v. Faulkner County*, 49 F.3d 1289 (8th Cir. 1995); *Independent Party v. Priest*, 907 F. Supp. 1276 (E.D. Ark. 1995).

## CHAPTER 4

# BOARDS OF ELECTION COMMISSIONERS AND OTHER ELECTION OFFICERS

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. VOLUNTEER DEPUTY VOTER REGISTRARS. [REPEALED.]

### SUBCHAPTER 1 — GENERAL PROVISIONS

#### SECTION.

- 7-4-101. State Board of Election Commissioners — Members — Officers — Meetings.
- 7-4-102. County boards of election com-

#### SECTION.

- missioners — Election of members — Oath.
- 7-4-103. Vacancy or disqualification of state or county chair.



## SECTION.

- 7-4-104. Lists of county chairs — Notification of vacancies.
- 7-4-105. County board of election commissioners — Officers — Meetings.
- 7-4-106. Assistance of prosecuting attorney.
- 7-4-107. Duties of county board of election commissioners — Ballot boxes — Voting booths — Appointment of election officers.
- 7-4-108. Absence of election officials — Filling vacancy.
- 7-4-109. Qualifications of state and county commissioners and other election officials.

## SECTION.

- 7-4-110. Oath of election officers.
- 7-4-111. Compensation of board members.
- 7-4-112. Compensation of election officials.
- 7-4-113. Record of funds and expenditures.
- 7-4-114. Filling vacancy of an elected office — Effect.
- 7-4-115. Legislative intent.
- 7-4-116. Election poll workers program for high school students.
- 7-4-117. Election poll workers program for college students.
- 7-4-118. Complaints of election law violations.
- 7-4-119. Disclosure required.

**Effective Dates.** Acts 1969, No. 465, Art. 13, § 10: approved Apr. 17, 1969. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the present election laws are ancient and outdated in part and have caused and are causing much confusion and controversy, that there are particular problem areas in the present law which need immediate legislation in order to resolve same, that elections are and will continue to be held and conducted in this atmosphere of confusion and controversy until these problem areas are resolved and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in force and effect from and after its passage."

Acts 1970 (Ex. Sess.), No. 11, § 3: approved Mar. 13, 1970. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the error corrected by this act causes great confusion in the preparation for an election; that an election is being prepared for at this time and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in force and effect from and after its passage."

Acts 1972 (Ex. Sess.), No. 41, § 4: Feb. 18, 1972. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present re-

quirements that primary election officials reside in the ward or voting precinct in which such official is appointed to serve is unreasonably restrictive and may result in it being very difficult to obtain election officials to conduct primary elections in this state and that it is essential to the proper and efficient conduct of such election that this requirement be removed immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 157, § 10: Feb. 20, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present laws of the state, that separate or common polling places cannot be established by county committees in counties using voting machines without attendant substantial costs; that it is essential to the proper and economical administration of the election laws of this state that legislation be enacted immediately to provide that respective county committees or county elections commissions in counties using voting machines may designate separate and/or common polling places where all elections can be held and to provide for a minimum number of election officials to serve at such polling places so that substantial economies can be realized in the conduct of such elections. Therefore, an emergency is declared to exist and this act, being

necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 783, § 6: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the efficient and proper conduct of elections in this state is essential to our form of representative government, and that the immediate passage of this act is necessary to reorganize the membership of the State Board of Election Commissioners and to establish a Citizens Election Advisory Council to plan and supervise the conduct of elections and to recommend laws to strengthen the state's election process. Therefore, an emergency is hereby declared to exist, and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 403, § 4: Mar. 25, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present per diem prescribed by law for the county board of election commissioners was established in 1969 and there has been some difference of opinion concerning whether the per diem prescribed in Section 7 of Article 5 of Act 465 of 1969 was intended as a fixed per diem or merely a minimum per diem to be paid members of the county board of election commissioners; that it is the purpose of this act to permit the increase of the per diem prescribed by law for members of the county board of election commissioners and to ratify and confirm the payment of a per diem in excess of fifteen dollars (\$15.00) per day to county boards of election commissioners prior to the effective date of this act, and that this act should be given effect immediately to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 522, § 5: Mar. 14, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that by law the county chairman of the county committee of the majority party and the minority party are members of the county board of election commis-

sioners; that in some instances these persons are also elected officials; that it constitutes at least the appearance of a conflict of interest for the county chairmen, when also elected officials, to serve on the county board of election commissioners; that this Act will prohibit them from serving and therefore avoid the appearance of a conflict of interest; and that until this Act becomes effective the possibility of the conflict of interest will continue. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 760, § 5: Mar. 26, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law does not allow a member of the County Board of Election Commissioners to fill a vacancy in an elective office without vacating his seat on the commission; that such law is inequitable and denies the citizens of this state the service of highly qualified people; that this act corrects the inequity; and that this act should go into effect immediately in order to allow the citizens the service of qualified people who are otherwise unable to serve. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Identical Acts 1995, Nos. 349 and 352, § 7: Feb. 17, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that there now exists a vacancy on the Ethics Commission due to a decision by the Arkansas Supreme Court that invalidated the Chief Justice's appointment of a member of the commission; that this vacancy should be filled as soon as possible; and that this act establishes the mechanism for filling that vacancy and therefore should be placed into effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 709, § 21: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth



General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1995, No. 1217, § 12: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the Gen-

eral Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1174, § 2: Mar. 29, 2001. Emergency clause provided: "It is found and determined by the General Assembly that four of the terms will expire prior to the implementation of this act and as a result the State Board of Election Commissioners will lose a majority of its current membership, resulting in a loss of continuity and experience. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

## RESEARCH REFERENCES

**Am. Jur.** 25 Am. Jur. 2d, Elections, § 39 et seq.

**Ark. L. Notes.** Cihak and Springman, HAVA and Arkansas Election Law Re-

form: Compliance and Promise, 2006 Arkansas L. Notes 1.

**C.J.S.** 29 C.J.S., Elections, § 55 et seq.



**CASE NOTES****Performance of Official Duties.**

The presumption that officers, absent proof to the contrary, have performed their official duties applies also to election

officers. *McKenzie v. De Witt*, 196 Ark. 1115, 121 S.W.2d 71 (1938) (decision under prior law).

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**7-4-101. State Board of Election Commissioners — Members — Officers — Meetings.**

(a) The State Board of Election Commissioners shall be composed of the following seven (7) persons, with at least one (1) from each congressional district:

(1) The Secretary of State;

(2) One (1) person designated by the chair of the state Democratic Party;

(3) One (1) person designated by the chair of the state Republican Party;

(4) One (1) person to be chosen by the President Pro Tempore of the Senate;

(5) One (1) person to be chosen by the Speaker of the House of Representatives; and

(6) Two (2) persons to be chosen by the Governor, one (1) of whom shall be a county clerk and one (1) of whom shall have served for at least three (3) years as a county election commissioner.

(b) The Secretary of State shall serve as chair and secretary of the board.

(c) Except for the Secretary of State and the county clerk, no member of the board shall be an elected public official.

(d)(1) The term on the board of the Secretary of State shall be concurrent with his or her term in office.

(2) The county clerk shall hold the office of county clerk when appointed to the board and shall be removed as a member of the board if not in office.

(3)(A) Members of the board appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be appointed for terms of two (2) years and shall continue to serve until successors have been appointed and taken the official oath.

(B) All other appointive members shall be appointed for terms of four (4) years and shall continue to serve until successors have been appointed and taken the official oath.

(4) No appointive member shall be appointed to serve more than two (2) consecutive full terms.

(5)(A) If a vacancy on the board occurs, a successor shall be appointed within thirty (30) days to serve the remainder of the unexpired term.

(B) The appointment shall be made by the official holding the office responsible for appointing the predecessor.

(e)(1) The board shall meet as needed upon call of the chair or upon written request to the chair of any four (4) members.

(2) A majority of the membership of the board shall constitute a quorum for conducting business.

(3) No sanctions shall be imposed without the affirmative vote of at least four (4) members of the board.

(4) Meetings of the board may be chaired and conducted by either the chair or a member of the board designated by the chair as acting chair for the meeting.

(f) The board shall have the authority to:

(1) Publish a candidate's election handbook, in conjunction with the office of the Secretary of State and the Arkansas Ethics Commission, which outlines in a readable and understandable format the legal obligations of a candidate and any other suggestions that might be helpful to a candidate in complying with state election law;

(2) Conduct statewide training for election officers and county election commissioners;

(3) Adopt all necessary rules regarding training referred to in subdivision (f)(2) of this section and develop procedures for monitoring attendance;

(4) Monitor all election law-related legislation;

(5) Formulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures;

(6)(A) Appoint certified election monitors to any county upon a signed, written request under oath filed with the board and a determination by the board that appointing a monitor is necessary.

(B) Certified election monitors shall serve as observers for the purpose of reporting to the board on the conduct of the election.

(C) The board may allow for reasonable compensation for election monitors;

(7) Assist the county board of election commissioners in the performance of administrative duties of the election process if the board determines that assistance is necessary and appropriate;

(8)(A) Formulate, adopt, and promulgate all necessary rules to establish uniform and nondiscriminatory administrative complaint procedures consistent with the requirements of Title IV of the federal Help America Vote Act.

(B) The cost of compliance with Title IV of the federal Help America Vote Act shall be paid from the fund established to comply with the federal Help America Vote Act;

(9) Investigate alleged violations, render findings, and impose disciplinary action according to § 7-4-118 for violations of election and voter registration laws, except as to § 7-1-103(a)(1)-(4), (6), and (7), and except for any matters relating to campaign finance and disclosure laws which the Arkansas Ethics Commission shall have the power and authority to enforce according to §§ 7-6-217 and 7-6-218;

(10) Examine and approve in accordance with §§ 7-5-503 and 7-5-606 the types of voting machines and electronic vote tabulating devices used in any election; and

(11) Administer reimbursement of election expenses to counties in accordance with § 7-7-201(a) for primary elections, statewide special elections, and nonpartisan judicial general elections.

(g) The Attorney General shall provide legal assistance to the board in answering questions regarding election laws.

(h)(1) The board may appoint a Director of the State Board of Election Commissioners, who may hire a staff.

(2) The director shall serve at the pleasure of the board.

(3) The board shall set the personnel policies in accordance with the Regular Salary Procedures and Restrictions Act, § 21-5-101 et seq., and the Uniform Classification and Compensation Act, § 21-5-201 et seq.

**History.** Acts 1969, No. 465, Art. 5, §§ 2, 3; 1977, No. 783, § 1; A.S.A. 1947, §§ 3-502, 3-503; Acts 1993, No. 1092, § 1; 1995, No. 349, § 3; 1995, No. 352, § 3; 1995, No. 741, § 1; 1995, No. 929, § 1; 1995, No. 940, § 1; 1995, No. 1217, § 5; 1997, No. 647, § 1; 1999, No. 997, § 1; 2001, No. 1174, § 1; 2003, No. 994, § 14; 2003, No. 1161, § 1; 2005, No. 1827, § 1; 2007, No. 559, § 1; 2009, No. 250, § 2.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, this section is set out above as amended by Acts 1995, Nos. 741, 929, 940, and 1214. Subsection (f) of this section was also amended by identical Acts 1995, Nos. 349 and 352, § 3, to read as follows: “(f) The State Board of Election Commissioners may perform the following duties:

“(1) Publish a ‘plain English’ election handbook which addresses the ‘do’s and don’t’s’ for candidates under Arkansas law;

“(2) Conduct statewide training for election clerks and judges and county election commissioners;

“(3) Monitor all election law-related legislation;

“(4) Conduct investigations of citizen complaints and issue advisory opinions regarding violations of election laws, except as to § 7-1-103(1) — (4), (6), (7), and (8), or except for any matter relating to campaign finance and disclosure laws, which the Arkansas Ethics Commission shall have the same power and authority to enforce as is provided the commission under §§ 7-6-217 and 7-6-218 for the enforcement of campaign finance laws;

“(5) To develop procedures for receiving citizen complaints which are referred to in subdivision (f)(4) of this section;

“(6) Establish guidelines for and monitor the qualifications of all election officials; and

“(7) Formulate, adopt, and promulgate all necessary rules and regulations to assure even and consistent application of fair and orderly election procedures.”

Acts 2011, No. 578, § 7, provided: “TRANSFER OF FUNDS. If the State Board of Election Commissioners is required to pay the expenses for any state supported preferential primary election, general primary election, nonpartisan judicial general election, statewide special election or special primary election and funds are not available to pay for such elections, the Director of the State Board of Election Commissioners shall certify to the Chief Fiscal Officer of the State the amount needed to pay the expenses of the election(s). Upon the approval of the Chief Fiscal Officer of the State, the amount certified shall be transferred from the Budget Stabilization Trust Fund to the Miscellaneous Agencies Fund Account of the State Board of Election Commissioners. All unused funds transferred under this provision shall be transferred back to the Budget Stabilization Trust Fund at the end of each fiscal year. The Chief Fiscal Officer of the State shall initiate the necessary transfer documents to reflect all such transfers upon the fiscal records of the State Auditor, the State Treasurer and the Chief Fiscal Officer of the State.

“The provisions of this section shall be in effect from July 1, 2011 through June 30, 2012.”

**Amendments.** The 2007 amendment inserted “congressional” in (a); in (f), sub-



stituted "officers" for "officials" in (2), deleted "and regulations" following "rules" in (3), (5) and (8)(A), inserted "and electronic vote tabulating devices" in (10), and deleted former (12) and (13); and made related changes.

The 2009 amendment substituted "Secretary of State" for "elected state official"

in (d)(1), and made a minor stylistic change.

**U.S. Code.** The Help America Vote Act of 2002, referred to in (f)(8), is codified as 42 U.S.C.S. § 15301.

### RESEARCH REFERENCES

**Ark. L. Rev.** Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

**U. Ark. Little Rock L. Rev.** Survey of

Legislation, 2003 Arkansas General Assembly, Election Law, Help America Vote Act, 26 U. Ark. Little Rock L. Rev. 398.

## 7-4-102. County boards of election commissioners — Election of members — Oath.

(a)(1) In January of each odd-numbered year following the election of county committee officers, members of the county board of election commissioners shall be elected by their respective county committees.

(2) The membership of the county board shall be as follows:

(A) Two (2) members elected by the county committee of the majority party; and

(B) One (1) member elected by the county committee of the minority party.

(b)(1) Within ten (10) days of the date of selection to the county board, the chair or secretary of each county committee shall notify the county clerk in writing of the names and addresses of those selected to serve on the county board.

(2) Upon receipt of the notice, the county clerk shall send to each of the county election commissioners, by registered mail, notice to appear before the clerk within thirty (30) days of selection as a county election commissioner to take and subscribe to the oath prescribed by the Arkansas Constitution.

(3) The oath shall be filed in the office of the county clerk and a duplicate forwarded to the Secretary of State.

(c) As soon as practicable following the election of members to the county board, the chair of the majority party of the county shall file with the county clerk and the Secretary of State a notice setting forth the names of the majority party's designated members of the county board, and the chair of the minority party shall file with the county clerk and the Secretary of State a notice setting forth the name of the minority party's member of the county board.

(d) The county board is deemed to consist of county officials, and its members shall be immune from tort liability pursuant to § 21-9-301.

(e) A member of the county board shall serve at the pleasure of his or her respective county committee, and a county committee may remove a member of the county board representing the county committee by majority vote of the county committee.

(f)(1) A vacancy on the county board shall be filled by the election of a new member by the county committee of the appropriate party.

(2)(A) The county committee shall elect a new member within forty-five (45) days of a vacancy.

(B) If the county committee fails to elect a new member within forty-five (45) days of a vacancy, the state chair of the appropriate party shall appoint a new member to the county board.

**History.** Acts 1969, No. 465, Art. 5, § 2; A.S.A. 1947, § 3-502; Acts 1987, No. 248, § 4; 1989, No. 522, § 1; 1989 (3rd Ex. Sess.), No. 73, § 1; 1993, No. 843, § 1; 1995, No. 1014, § 1; 1997, No. 647, § 2; 1999, No. 1422, § 2; 2007, No. 489, § 1; 2007, No. 559, § 2; 2011, No. 1056, § 1.

**A.C.R.C. Notes.** Acts 2011, No. 1056, § 3, provided: "A member of a county board of election commissioners serving as of the effective date of this act shall continue to serve on the county board until his or her successor is selected by his or her respective county committee."

**Publisher's Notes.** Acts 1995, No. 1014 became law without the Governor's signature.

**Amendments.** The 2007 amendment by No. 489 added present (e).

The 2007 amendment by No. 559 substituted "selected by the county committee

of the majority party at the same time as the election of party officers" for "to be appointed by the State Board of Election Commissioners" in (a)(1); redesignated former (a)(2)(A) as present (a)(2); substituted "select a resident of the county qualified" for "elect someone" in (a)(2); deleted (a)(2)(B); substituted "select a resident of the county qualified" for "appoint someone" in (a)(3); deleted former (b) and redesignated the remaining subsections accordingly; rewrote present (b); and rewrote present (c).

The 2011 amendment rewrote (a); substituted "As soon as practicable, following the election of members to the county board" for "Between January 1 and January 31 of each year" in (c); rewrote (e); and added (f).

## CASE NOTES

### ANALYSIS

Removal of County Election Commissioners.

Selection of County Election Commissioners.

### Removal of County Election Commissioners.

The position of county election commissioners being a public office with a fixed term, and there being no power of removal conferred by statute, the State Board of Election Commissioners had no authority to remove county election commissioners after their appointment and qualification. *Warren v. McRae*, 165 Ark. 436, 264 S.W. 940 (1924) (decision under prior law).

Where the State Board of Election Commissioners, without authority, attempted to remove a county board of election commissioners, their act, being quasi-judicial, could be quashed on certiorari. *Warren v.*

*McRae*, 165 Ark. 436, 264 S.W. 940 (1924) (decision under prior law).

The proper legal proceeding to challenge eligibility of a candidate and seek his removal is by writ of mandamus coupled with a declaratory judgment action; the same rings true to disqualify a person who is serving as an election commissioner under this section. *Morgan v. Neuse*, 314 Ark. 4, 857 S.W.2d 826 (1993).

### Selection of County Election Commissioners.

The federal court did not have jurisdiction of an action against the county election commission alleging abridgement of black citizens' right to vote based on the composition of the board. *McGruder v. Phillips County Election Comm'n*, 850 F.2d 406 (8th Cir. 1988).

**Cited:** *Armstrong v. Sims*, 715 F. Supp. 1440 (E.D. Ark. 1989).

**7-4-103. Vacancy or disqualification of state or county chair.**

(a) In the event of a vacancy or disqualification on the part of any state or county chair for either the majority party or a minority party, the state vice chair or county vice chair of the party in which the vacancy occurs shall act as county chair or state chair, as the case may be, for all of the purposes set out in § 7-4-101 and this section until a new county chair or state chair is selected by the parties.

(b) In the event that no county chair or county vice chair has been elected in any of the several counties of Arkansas for either the majority party or a minority party by the fiftieth calendar day before any general election, then and in that event, the State Board of Election Commissioners shall have authority to elect by majority vote qualified persons from the county committee of the majority or a minority party so affected to fill the vacancies whether or not the vacancies are caused by failure to elect or by death, resignation, or disqualification.

**History.** Acts 1969, No. 465, Art. 5, §§ 2, 5; A.S.A. 1947, §§ 3-502, 3-505; Acts 1987, No. 248, § 6; 1995, No. 1014, § 2; 2001, No. 794, § 1; 2011, No. 1056, § 2.

**A.C.R.C. Notes.** Acts 2011, No. 1056, § 3, provided: "A member of a county board of election commissioners serving as of the effective date of this act shall continue to serve on the county board

until his or her successor is selected by his or her respective county committee."

**Publisher's Notes.** Acts 1995, No. 1014 became law without the Governor's signature.

**Amendments.** The 2011 amendment deleted "7-4-103" following "§ 7-4-101" in (a); deleted the last sentence in (b); and deleted (c).

**CASE NOTES****Removal of County Election Commissioners.**

The position of county election commissioners being a public office with a fixed term, and there being no power of removal conferred by statute, the State Board of

Election Commissioners had no authority to remove county election commissioners after their appointment and qualification. *Warren v. McRae*, 165 Ark. 436, 264 S.W. 940 (1924).

**7-4-104. Lists of county chairs — Notification of vacancies.**

(a)(1) It shall be the duty of the majority and minority parties to keep on file with their respective state chair a complete list of all of their respective county chairs.

(2) It shall be the duty of the respective county chairs of both the majority and minority parties to keep on file with the Secretary of State a letter stating the name of the county chairs and to notify promptly the Secretary of State of the death, resignation, disqualification, or vacancy in the office of any county chair and of the election of a new chair to fill the vacancy thus created.

(b) It shall be the duty of the Secretary of State to keep the letters containing the names of the county chairs of the majority and minority parties as public records open at all times to public inspection.



**History.** Acts 1969, No. 465, Art. 5, § 5; A.S.A. 1947, § 3-505; Acts 1997, No. 647, § 3; 2001, No. 475, § 1.

#### **7-4-105. County board of election commissioners — Officers — Meetings.**

(a) The county board of election commissioners shall hold office until their successors are appointed and qualified. The commissioners shall meet at the courthouse at least thirty (30) days prior to the general election and shall organize themselves into a county board of election commissioners by electing one (1) member chair. Each commissioner shall have one (1) vote. Two (2) commissioners shall constitute a quorum, and the concurring votes of any two (2) shall decide questions before them unless otherwise provided by law.

(b) The chair of a county board of election commissioners shall notify all commissioners of all meetings. Any meeting of two (2) or more commissioners when official business is conducted shall be public and held pursuant to the Freedom of Information Act of 1967, § 25-19-101 et seq. The county board shall keep minutes of all meetings when official business is conducted, and the minutes shall be filed of record with the county clerk.

**History.** Acts 1969, No. 465, Art. 5, § 6; 1971, No. 261, § 9; A.S.A. 1947, § 3-506; Acts 1997, No. 647, § 4.

#### **7-4-106. Assistance of prosecuting attorney.**

(a) The county board of election commissioners, as created by this subchapter, may call upon the prosecuting attorney or his or her deputy for legal opinions, advice, or assistance in defending, commencing, or appealing civil actions at law and equity.

(b) The county or prosecuting attorney shall defend any civil lawsuit brought against the county board or its members if they are sued in regard to acts or omissions made during the course of their official duties.

**History.** Acts 1977, No. 527, § 1; A.S.A. 1947, § 3-506.1; Acts 1993, No. 780, § 1.

### **CASE NOTES**

#### **Contest of School Election.**

Enactment of this section did not change rule that directors or school board members, and not county board of election

commissioners, were proper parties defendant in contest of school election approving millage increase. *Allen v. Rankin*, 269 Ark. 517, 602 S.W.2d 673 (1980).

**7-4-107. Duties of county board of election commissioners — Ballot boxes — Voting booths — Appointment of election officers.**

(a) The county board of election commissioners shall proceed to establish and allocate a sufficient number of ballot boxes in each precinct or polling site. The county board shall appoint the requisite number of election officials at each site where voters present themselves to vote to ensure that there is a sufficient number of election officials at each site, based upon the votes in the immediately preceding comparable election.

(b)(1) It shall be the duty of the county board to select and appoint a sufficient number of election officials for each polling site as provided by subsection (a) of this section and to perform the other duties prescribed not less than twenty (20) days preceding an election.

(2) Each polling site shall have a minimum of two (2) election clerks, one (1) election judge, and one (1) election sheriff. For all regularly scheduled elections, at least one (1) election official at each polling site shall have attended election training coordinated by the State Board of Election Commissioners within twelve (12) months prior to the election. The minority party election commissioner shall have the option to designate a number of election officials equal to one (1) less than the majority of election officials at each polling site, with a minimum of two (2) election officials at each polling site. In the event that the county party representatives on the county board fail to agree upon any election official to fill any election post allotted to the respective party twenty (20) days before the election, the county board shall appoint the remaining election officials.

(c) The county board shall certify to the county court the per diem of election officials and the mileage of the election official carrying the returns to the county election commissioners' office for allowance.

(d) The county board may permit election officials to work half-day or split shifts at the polls at any election so long as the requisite number of election officials is always present.

**History.** Acts 1969, No. 465, Art. 5, § 6 and Art. 7, § 3; 1971, No. 261, § 9; 1973, No. 157, § 6; A.S.A. 1947, §§ 3-506, 3-703; Acts 1993, No. 511, §§ 1, 2; 1997, No. 647, § 5; 1999, No. 1490, § 2; 2001, No. 562, § 1; 2001, No. 1822, § 2; 2005, No. 894, § 1; 2005, No. 1827, § 2; 2007, No. 222, § 3; 2007, No. 559, § 3.

**Amendments.** The 2007 amendment by No. 222 redesignated former (b)(1)(B) as present (b)(2) and made a related change; and deleted former (b)(2) and (b)(3).

The 2007 amendment by No. 559 deleted former (e).

**CASE NOTES**

**ANALYSIS**

Absence of Commissioner.  
Appointment of Election Officials.

Payment of Poll Workers.  
Refusal to Hold Election.  
Removal of Election Judges.  
School Elections.

Sheriff's Fee.

### **Absence of Commissioner.**

Absence of one commissioner during recount, or appointment of another individual to assist in recount, did not invalidate recount. *Bonds v. Rogers*, 219 Ark. 319, 241 S.W.2d 371 (1951) (decision under prior law).

### **Appointment of Election Officials.**

Where an attempt to obtain black election officials failed, it was not a deliberate and discriminatory act for the election commissioners to appoint white election officials under subsection (b). *McGruder v. Phillips County Election Comm'n*, 850 F.2d 406 (8th Cir. 1988).

### **Payment of Poll Workers.**

Section 7-4-112, which provides that the quorum court shall set the amount to be paid to poll workers, and former subsection (e) of this section are not inconsistent or in conflict. *Union County v. Union County Election Comm'n*, 274 Ark. 286, 623 S.W.2d 827 (1981).

### **Refusal to Hold Election.**

Where the commissioners refused to hold the special election on the day designated by order of the county court, the

county judge and the sheriff were authorized to act in their place and order the election. *Blaylock v. Bank of McCrory*, 170 Ark. 597, 280 S.W. 650 (1926) (decision under prior law).

### **Removal of Election Judges.**

Since every presumption must be indulged to sustain the regularity and legality of an election, removal of old election judges by the election commission and appointment of new ones was presumed valid, the act of removal being within the power of the commission. *McKenzie v. De Witt*, 196 Ark. 1115, 121 S.W.2d 71 (1938) (decision under prior law).

### **School Elections.**

Partisan selection of judges and clerks for elections does not apply to school elections, since school elections are not general or special elections. *Henley v. Goggins*, 250 Ark. 912, 467 S.W.2d 697 (1971).

### **Sheriff's Fee.**

A county is liable for fees and mileage of the sheriff in serving notice to the judges of election for each voting precinct of the county as to their appointment by the board of election commissioners. *Ouachita County v. Chidester*, 99 Ark. 206, 137 S.W. 811 (1911) (decision under prior law).

## **7-4-108. Absence of election officials — Filling vacancy.**

If any election official shall be absent at the time fixed for the opening of the polls, then the other election officials shall appoint some person or persons having the qualifications prescribed by this act for election officials to supply the vacancy; and if all of the officials shall be absent, then the voters present shall elect as election officials persons having the required qualifications. The county board of election commissioners shall be notified of any vacancies and substitutions of election officials.

**History.** Acts 1969, No. 465, Art. 7, § 3; A.S.A. 1947, § 3-703; Acts 1997, No. 647, § 6.

**Meaning of "this act".** Acts 1969, No. 465, codified as §§ 7-1-101, 7-1-103 — 7-1-105, 7-3-101 — 7-3-108, 7-4-101 — 7-4-105, 7-4-107 — 7-4-112, 7-5-101, 7-5-102, 7-5-103 [repealed], 7-5-202 — 7-5-209, 7-5-210 [repealed], 7-5-211, 7-5-301, 7-5-302 [repealed], 7-5-303 [repealed], 7-5-304 — 7-5-306, 7-5-307 [repealed], 7-5-308, 7-5-309, 7-5-312 [repealed], 7-5-313 [repealed], 7-5-314 — 7-5-319, 7-5-401, 7-5-402, 7-5-405 — 7-5-417, 7-5-501

[repealed], 7-5-502 — 7-5-504, 7-5-505 [repealed], 7-5-506 [repealed], 7-5-507, 7-5-508 [repealed], 7-5-509, 7-5-511 [repealed], 7-5-512, 7-5-513, 7-5-514 [repealed], 7-5-515 — 7-5-518, 7-5-519 [repealed], 7-5-520 — 7-5-522, 7-5-524 — 7-5-531, 7-5-701 — 7-5-706, 7-5-801 — 7-5-809, 7-6-101 — 7-6-105, 7-7-101 — 7-7-105, 7-7-201 — 7-7-203, 7-7-301 — 7-7-307, 7-7-309, 7-7-310 [repealed], 7-7-401, 7-7-402, 7-7-403 [repealed], 7-8-101 — 7-8-104, 7-8-301, 7-8-302, 7-8-304 — 7-8-307, 25-16-801.



**CASE NOTES****Absence of Judges.**

The fact that judges appointed by the election commissioners did not appear and hold an election with reference to the issuance of city bonds did not invalidate an election in the absence of a showing that the persons holding the election were

not elected to fill vacancies in the manner provided for by law, that votes were not honestly cast and counted, or that any attempt was made to interfere with the voters' freedom of action. *El Dorado v. Jacobs*, 174 Ark. 98, 294 S.W. 411 (1927) (decision under prior law).

**7-4-109. Qualifications of state and county commissioners and other election officials.**

(a)(1) The members of the State Board of Election Commissioners, the members of each county board of election commissioners, and election officials shall be qualified electors of this state, able to read and write the English language, and shall not have been found guilty or pleaded guilty or *nolo contendere* to the violation of any election law of this state.

(2) No election official, as defined in § 7-1-101, shall be a candidate for any office to be filled at any election while serving as an election official.

(3) A member of the county board of election commissioners shall not be disqualified from serving as a member of the county board by the appearance on the ballot as a candidate for a position in his or her political party.

(b) Furthermore, all members of each county board shall be residents of the county in which they serve at the time of their appointment or election. All election officials shall be residents of the precincts in which they serve at the time of their appointment. However, if at the time of posting election officials, the county board by unanimous vote shall find that it is impossible to obtain qualified election officials from any precinct or precincts and shall make certification of that finding to the county clerk, then other qualified citizens of the county may be designated to serve in the precinct or precincts.

(c)(1) No person who is a paid employee of any political party or of any person running for any office on that county's ballot shall be eligible to be a member of a county board or an election official.

(2)(A) No person serving on the county board shall participate in any person's campaign listed on that county's ballot.

(B) The making of a financial contribution to a candidate shall not be considered participating in a candidate's campaign.

(3) No person employed with a company that has any business dealings, contracts, or pending contracts before a county board to which he or she would seek appointment shall be eligible to be a candidate for the county board.

(d) No person may serve as an election official if married to or related within the second degree of consanguinity to any candidate running for office in the current election if objection to his or her service is made to the county board within ten (10) calendar days after posting the list of officials.

(e)(1) Prior to the regularly scheduled preferential primary election, each member of the county board of election commissioners for each county and at least two (2) election officials per polling site designated by the county board for each county shall attend election training coordinated by the state board.

(2) The state board shall determine the method and amount of compensation for attending the training.

**History.** Acts 1969, No. 465, Art. 5, § 4, and Art. 13, § 5; 1971, No. 451, § 2; 1972 (Ex. Sess.), No. 41, § 2; A.S.A. 1947, §§ 3-504, 3-1305; Acts 1987, No. 248, § 5; 1993, No. 715, §§ 1, 2; 1997, No. 647, § 7; 2001, No. 796, § 1; 2001, No. 1822, § 1; 2005,

No. 894, § 1; 2005, No. 1827, § 3; 2007, No. 489, § 2.

**Amendments.** The 2007 amendment added the (c)(1) designation, inserted “on that county’s ballot” in (c)(1), and added (c)(2) and (c)(3).

## CASE NOTES

### ANALYSIS

Incumbent State Officer.  
Party Chairman.  
Validity of Election.

#### Incumbent State Officer.

Although an incumbent state senator had been defeated in the primary for re-election, he was ineligible to serve as a member of the county board of election commissioners. *Jones v. Duckett*, 234 Ark. 990, 356 S.W.2d 5 (1962) (decision under prior law).

#### Party Chairman.

Since county party chairman was ex officio member of the board of election

commissioners, person ineligible to serve as county election commissioner was ineligible to serve as party chairman. *Jones v. Duckett*, 234 Ark. 990, 356 S.W.2d 5 (1962) (decision under prior law).

#### Validity of Election.

Where the election commissioners selected judges for the election, the election was not rendered void because judges who were selected did not possess the requisite qualifications and were all strong partisans of one side of the issue to be determined at the election. *Webb v. Bowden*, 124 Ark. 244, 187 S.W. 461 (1916) (decision under prior law).

## 7-4-110. Oath of election officers.

(a) The election officials, before entering on their duties, shall take, before some person authorized by law to administer oaths, the following oath:

“I, \_\_\_\_\_, do swear that I will perform the duties of an election official of this election according to law and to the best of my abilities, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same, and that I will not disclose how any voter shall have voted, unless required to do so as a witness in a judicial proceeding or a proceeding to contest an election.”

(b) In case there shall be no person present at the opening of any election authorized to administer oaths, it shall be lawful for the election officials to administer the oath to each other, and the election officials shall have full power and authority to administer all oaths that may be necessary in conducting any election.

**History.** Acts 1969, No. 465, Art. 7, § 4; A.S.A. 1947, § 3-704; Acts 1997, No. 647, § 8.

#### **7-4-111. Compensation of board members.**

(a) The State Board of Election Commissioners may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(b) Each member of the county board of election commissioners shall receive for services the sum of not less than twenty-five dollars (\$25.00) per public meeting when official business is conducted.

**History.** Acts 1969, No. 465, Art. 5, § 7; § 42; 1997, No. 647, § 9; 2005, No. 1677, A.S.A. 1947, § 3-507; Acts 1987, No. 403, § 2. § 1; 1995, No. 709, § 13; 1997, No. 250,

#### **7-4-112. Compensation of election officials.**

(a) The election officials shall receive a minimum of the prevailing federal minimum wage for holding an election, or such greater amount as may be appropriated.

(b) In addition, each election official carrying election materials to and from the polling sites shall be allowed mileage at such rate as may be appropriated but not to exceed the rate prescribed for state employees in state travel regulations.

**History.** Acts 1969, No. 465, Art. 7, No. 169, § 1; A.S.A. 1947, § 3-720; Acts § 20; 1970 (Ex. Sess.), No. 11, § 1; 1983, 1997, No. 647, § 10; 2005, No. 67, § 2.

### **CASE NOTES**

#### **Construction with former § 7-4-107(e).**

This section and former § 7-4-107(e), which provides that the election commission shall compute and then certify to the county court the amount necessary to pay

per diem to each poll worker and to pay mileage to the election judge, are not inconsistent or in conflict. *Union County v. Union County Election Comm'n*, 274 Ark. 286, 623 S.W.2d 827 (1981).

#### **7-4-113. Record of funds and expenditures.**

The county board of election commissioners of each county shall maintain a record of all funds the county board receives and all expenditures of the county board. These records shall be open to the public under the provisions of the Freedom of Information Act of 1967, § 25-19-101 et seq.

**History.** Acts 1987, No. 795, § 1.

#### **7-4-114. Filling vacancy of an elected office — Effect.**

Any member of a county board of election commissioners may be appointed to fill a vacancy in an elected office without vacating his or



her seat on the county board. The member shall not be eligible for reelection to the office when the term expires.

**History.** Acts 1993, No. 760, § 1.

#### **7-4-115. Legislative intent.**

Due to the recent United States Eighth Circuit Court of Appeals ruling in *Jones v. Conway County, Arkansas*, 143 F.3d 417 (8th Cir. 1998), the status of county election commissioners as either county officials or state officials has become unclear. Because of this lack of clarity, there has been much confusion as to whether or not county election commissioners should have been or currently are immune from suit under the state's policy of tort immunity. It is the intent of the General Assembly to clarify the official status of county election commissioners. Prior to July 30, 1999, county election commissioners were state officials and, as such, were immune from suit pursuant to Arkansas Constitution, Article 5, § 20, and § 19-10-305. Upon July 30, 1999, county election commissioners are hereby deemed to be county officials and are immune from suit pursuant to § 21-9-301.

**History.** Acts 1999, No. 1422, § 1.

#### **7-4-116. Election poll workers program for high school students.**

(a)(1) The county board of election commissioners may conduct a special election day program for high school students in one (1) or more polling places designated by the county board.

(2) The high school students shall be selected by the county board in cooperation with the local high school principal, the local 4-H club, the local Boy Scout club, the local Girl Scout club, or any other local organization for youth designated by the county board.

(3)(A) A high school student selected for this program who has not reached his or her eighteenth birthday by the election day in which he or she is participating shall be called an election page.

(B) A high school student selected for this program who has reached his or her eighteenth birthday by the election day in which he or she is participating and meets the qualifications in § 7-4-109 may be an election official.

(b) The program shall:

(1) Be designed to stimulate the students' interest in elections and registering to vote;

(2) Provide assistance to the officers of election; and

(3) Assist in the safe entry and exit of elderly voters and voters with disabilities from the polling place.

(c)(1) Each student selected as an election page shall:

(A) Be granted an additional absence from school while working as an election page;

(B) Serve under the direct supervision of the election officials at his or her assigned polling place; and

(C) Observe strict impartiality at all times.

(2) An election page may observe the electoral process and seek information from the election officers but shall not handle or touch ballots, voting machines, or any other official election materials or enter any voting booth.

(3) An election page shall be in a volunteer position and shall not receive any compensation for performing his or her duties.

(4) Before beginning any duties, an election page shall take, before an election official, the following oath:

"I, \_\_\_\_\_, do swear that I will perform the duties of an election page of this election according to law and to the best of my abilities, and that I will studiously endeavor to prevent fraud, deceit, and abuse, and that I will not disclose how any voter shall have voted, unless required to do so as a witness in a judicial proceeding or a proceeding to contest an election."

(d)(1) Each student selected to be an election official shall:

(A) Take the oath of the election officials in § 7-4-110;

(B) Serve under the supervision of the appropriate county board of election commissioners;

(C) Observe strict impartiality at all times; and

(D) Be granted an additional absence from school while working as an election official.

(2) A high school student selected to be an election official may be compensated according to § 7-4-112 if the county board of election commissioners determines that the high school students selected to be election officials should be compensated.

**History.** Acts 2003, No. 242, § 1; 2005, substituted "granted an additional absence" for "excused" in (c)(1)(A) and

No. 67, § 3; 2011, No. 1223, §§ 6, 7. (d)(1)(D).

**Amendments.** The 2011 amendment

#### **7-4-117. Election poll workers program for college students.**

(a)(1) The county board of election commissioners may conduct an election day program for college students in one (1) or more polling places designated by the county board.

(2)(A) The college students shall be selected by the county board from any two-year or four-year college or university in the state.

(B) The county board shall work in cooperation with the student government associations of the colleges and universities in selecting the students for the program and conducting seminars concerning election procedures for students interested in the program.

(3)(A) A college student selected for this program who has not reached his or her eighteenth birthday by the election day in which he or she is participating shall be called an election page.

(B) A college student selected for this program who has reached his or her eighteenth birthday by the election day in which he or she is

participating and meets the qualifications in § 7-4-109 shall be an election official.

(b) The program shall:

(1) Be designed to stimulate the students' interest in elections and in registering to vote;

(2) Provide assistance to the officers of the election; and

(3) Assist in the safe entry and exit of elderly voters and voters with disabilities from the polling place.

(c)(1) Each student selected as an election page shall:

(A) Serve under the direct supervision of the election officials at his or her assigned polling place; and

(B) Observe strict impartiality at all times.

(2) An election page may observe the electoral process and seek information from the election officers but shall not handle or touch ballots, voting machines, or any other official election materials or enter any voting booth.

(3) An election page shall be in a volunteer position and shall not receive any compensation for performing his or her duties.

(4) Before beginning any duties, an election page shall take, before an election official, the following oath:

"I, \_\_\_\_, do swear that I will perform the duties of an election page of this election according to law and to the best of my abilities, and that I will studiously endeavor to prevent fraud, deceit, and abuse, and that I will not disclose how any voter shall have voted unless required to do so as a witness in a judicial proceeding or a proceeding to contest an election."

(d)(1) Each student selected to be an election official shall:

(A) Take the oath of the election officials in § 7-4-110;

(B) Serve under the supervision of the appropriate county board of election commissioners; and

(C) Observe strict impartiality at all times.

(2) A college student selected to be an election official shall be compensated according to § 7-4-112.

**History.** Acts 2003, No. 1153, § 1;  
2005, No. 67, § 4.

#### **7-4-118. Complaints of election law violations.**

(a)(1) The State Board of Election Commissioners may investigate alleged violations, render findings, and impose disciplinary action according to this subchapter for violations of election and voter registration laws, except:

(A) For the provisions in § 7-1-103(a)(1)-(4), (6), and (7); and

(B) For any matters relating to campaign finance and disclosure laws that the Arkansas Ethics Commission shall have the power and authority to enforce according to §§ 7-6-217 and 7-6-218.

(2) For purposes of subdivision (a)(1) of this section, the board may file a complaint.



(3) A complaint must be filed with the board in writing within thirty (30) days of an alleged voter registration violation or the election associated with the complaint.

(4) A complaint must clearly state the alleged election irregularity or illegality, when and where the alleged activity occurred, the supporting facts surrounding the allegations, and the desired resolution.

(5) A complaint must be signed by the complainant under penalty of perjury.

(6)(A) Filing a frivolous complaint is considered a violation of this subchapter.

(B) For purposes of this section, "frivolous" means clearly lacking any basis in fact or law.

(b)(1) Upon receipt by the board of a written complaint signed under penalty of perjury stating facts constituting an alleged violation of election or voter registration laws under its jurisdiction, the board shall proceed to investigate the alleged violation.

(2) The board may determine that:

(A) The complaint can be disposed of through documentary submissions; or

(B) Further investigation is necessary.

(3) The board may forward the complaint, along with the information and documentation as deemed appropriate, to the proper authority.

(4)(A) If the board determines that an investigation is necessary, the board shall provide a copy of the complaint with instructions regarding the opportunity to respond to the complaint to the party against whom the complaint is lodged.

(B) The board may administer oaths for the purpose of taking sworn statements from any person thought to have knowledge of any facts pertaining to the complaint.

(C) The board may request the party against whom the complaint is lodged to answer allegations in writing, produce relevant evidence, or appear in person before the board.

(D) The board may subpoena any person or the books, records, or other documents relevant to an inquiry by the board that are being held by any person and take sworn statements.

(E) The board shall provide the subject of the subpoena with reasonable notice of the subpoena and an opportunity to respond.

(F) The board shall advise in writing the complainant and the party against whom the complaint is lodged of the final action taken.

(c) If the board finds that probable cause exists for finding a violation of election or voter registration laws under its jurisdiction, the board may determine that a full public hearing be called.

(d) If the board finds a violation of election or voter registration laws under its jurisdiction, then the board may do one (1) or more of the following:

(1) Issue a public letter of caution, warning, or reprimand;

(2) Impose a fine of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000) for each negligent or intentional violation;

(3) Report its findings, along with the information and documents as it deems appropriate, and make recommendations to the proper law enforcement authorities; or

(4) Assess costs for the investigation and hearing.

(e)(1) The board shall adopt rules governing the imposition of the fines in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2)(A) The board may file suit in the Pulaski County Circuit Court or in the circuit court of the county in which the debtor resides or, according to the Small Claims Procedure Act, § 16-17-601 et seq. [repealed], in the small claims division of any district court in the State of Arkansas to obtain a judgment for the amount of any fine imposed according to its authority.

(B) The action by the court shall not involve further judicial review of the board's actions.

(C) The fee normally charged for the filing of a suit in any of the circuit or district courts in the State of Arkansas shall be waived on behalf of the board.

(3) All moneys received by the board in payment of fines shall be deposited into the State Treasury as general revenues.

(f)(1) The board shall complete its investigation of a complaint filed according to this section and take final action within one hundred eighty (180) days of the filing of the complaint.

(2) However, if a hearing under subsection (c) of this section is conducted, all action on the complaint by the board shall be completed within two hundred forty (240) days.

(3) Any final action of the board under this section shall constitute an adjudication for purposes of judicial review under § 25-15-212.

(g)(1) The board shall keep a record of all inquiries, investigations, and proceedings.

(2) Records relating to investigations by the board are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., until a hearing is set or the investigation by the Director of the Board of Election Commissioners is closed.

(3) The board may disclose, through its members or staff, otherwise confidential information to proper law enforcement officials, agencies, and bodies as may be required to conduct its investigation.

**History.** Acts 2003, No. 1161, § 2; 2007, No. 559, § 4.

**Amendments.** The 2007 amendment substituted "an alleged voter registration violation or the election associated with the complaint" for "the alleged voter reg-

istration violation" in (a)(3); in (b)(1), inserted "written", inserted "signed under penalty of perjury", inserted "an alleged", and deleted "signed under penalty of perjury" following "jurisdiction"; and substituted "Further" for "An" in (b)(2)(B).

#### **7-4-119. Disclosure required.**

A member of a county board of election commissioners shall report to the Secretary of State any goods or services sold during the previous calendar year by himself or herself, his or her spouse, or any business

in which the member or his or her spouse is an officer, director, or stockholder owning more than ten percent (10%) of the stock having a total annual value in excess of one thousand dollars (\$1,000) to an office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of:

- (1) The State of Arkansas;
- (2) A county;
- (3) A municipality; and
- (4) A school district.

**History.** Acts 2011, No. 1216, § 1.

## SUBCHAPTER 2 — VOLUNTEER DEPUTY VOTER REGISTRARS

SECTION.

7-4-201 — 7-4-211. [Repealed.]

### 7-4-201 — 7-4-211. [Repealed.]

**Publisher's Notes.** This subchapter, concerning volunteer deputy voter registrars, was repealed by identical Acts 1995, Nos. 926 and 942, § 1. This subchapter was derived from the following sources:

- 7-4-201. Acts 1987, No. 799, §§ 1, 2, 4.
- 7-4-202. Acts 1987, No. 799, § 3.
- 7-4-203. Acts 1987, No. 799, § 8.
- 7-4-204. Acts 1987, No. 799, §§ 4, 5.

- 7-4-205. Acts 1987, No. 799, § 4.
- 7-4-206. Acts 1987, No. 799, § 6.
- 7-4-207. Acts 1987, No. 799, §§ 9, 11; 1993, No. 1214, § 1.
- 7-4-208. Acts 1987, No. 799, §§ 7, 8.
- 7-4-209. Acts 1987, No. 799, §§ 10, 13.
- 7-4-210. Acts 1987, No. 799, § 12.
- 7-4-211. Acts 1989, No. 539, § 1.

## CHAPTER 5

## ELECTION PROCEDURE GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PREELECTION PROCEEDINGS.
3. CONDUCT OF ELECTIONS.
4. ABSENTEE VOTING.
5. VOTING MACHINES.
6. PAPER BALLOTS AND ELECTRONIC VOTE TABULATING DEVICES.
7. RETURNS AND CANVASS.
8. ELECTION CONTESTS.

**Cross References.** Political parties, § 7-3-101 et seq.

**Effective Dates.** Acts 2001, No. 1789, § 12: Emergency clause failed. Emergency clause provided: "It is found and determined by the General Assembly that Amendment 80 to the Arkansas Constitution becomes effective on July 1, 2001; that this implements the nonpartisan

election of justices and judges as mandated by Amendment 80; and that to effectively implement Amendment 80, this act should become effective on July 1, 2001. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective on July 1, 2001."



## RESEARCH REFERENCES

**Ark. L. Notes.** Cihak and Springman, *form: Compliance and Promise*, 2006 Arkansas Election Law Re- arkansas L. Notes 1.

## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

- 7-5-101. Precinct boundaries and polling sites — Establishment and alteration.
- 7-5-102. Time of general election.
- 7-5-103. [Repealed.]
- 7-5-104. Election expenses — Allocation.
- 7-5-105. [Repealed.]
- 7-5-106. Runoff elections for county and municipal officers.

## SECTION.

- 7-5-107. Use of voter registration lists by poll workers.
- 7-5-108. [Repealed.]
- 7-5-109. Computerized voter registration lists.
- 7-5-110. Registration lists for each ballot combination.

**Effective Dates.** Acts 1969, No. 465, Art. 13, § 10: approved Apr. 17, 1969. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the present election laws are ancient and outdated in part and have caused and are causing much confusion and controversy, that there are particular problem areas in the present law which need immediate legislation in order to resolve same, that elections are and will continue to be held and conducted in this atmosphere of confusion and controversy until these problem areas are resolved and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in force and effect from and after its passage."

Identical Acts 1995, Nos. 946 and 963, § 14: Jan. 1, 1996.

Acts 1995 (1st Ex. Sess.), No. 7, § 5: Oct. 19, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relating to the designation of polling places in voting precincts in the state is unduly restrictive and that in the best interests of efficiency and convenience of the voting public, it is necessary that authority of the county board of election commissioners to fix polling places be clarified immediately and that this act is designed to do so. Therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the

public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2005, No. 1205, § 2: Mar. 24, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that that the law concerning allocation of election expenses is in need of revision; that this act provides for an appropriate allocation; and that this act is immediately necessary because a delay in its implementation could prevent it from applying to some elections. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and

this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the

expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### RESEARCH REFERENCES

**Am. Jur.** 26 *Am. Jur. 2d*, Elections, § 183 et seq.      **C.J.S.** 29 *C.J.S.*, Elections, § 66 et seq.

## 7-5-101. Precinct boundaries and polling sites — Establishment and alteration.

(a)(1) The county board of election commissioners shall:

(A) Establish election precincts; and

(B)(i) Designate a polling site for each precinct.

(ii) A polling site may serve two (2) or more precincts, including parts of precincts.

(2) Except as provided in § 6-14-106, the designation of polling sites shall be by a unanimous vote of the members of the county board present.

(b)(1) The county board by order may alter the boundaries of existing election precincts and establish new ones.

(2) A precinct shall not be altered and a new precinct shall not be created less than thirty (30) days before an election, except in the event of an emergency as determined by the county board.

(3)(A) An order to alter the boundaries of any precinct or establish any new one shall not be effective until it has been filed with the county clerk.

(B) The order shall contain a:

(i) Written description; and

(ii) Map of the boundaries of the precincts altered or established.

(c)(1) Within thirty (30) days after the boundaries of an election precinct are altered or a new election precinct is established, the county clerk shall submit five (5) copies of the changes in the form of a map and written descriptions to the Secretary of State.

(2) Upon receipt of the changes, the Secretary of State immediately shall forward a copy to the:

(A) Office of the Attorney General;

(B) Census State Data Center; and

(C) Cartography Section of the Arkansas State Highway and Transportation Department.

(d)(1) Except for school elections under § 6-14-106, the polling sites for each election shall be the same as those established for the immediately preceding general election unless changed by order of the county board.

(2) The county board shall not change a polling site for any precinct less than thirty (30) days before an election, except in the event of an emergency.

(3) Notice of any changes made in polling sites shall be provided by posting information at the polling sites used in the last election and, except for school elections and special elections, the notice shall be mailed by the county clerk to each affected registered voter at least fifteen (15) days before the election.

**History.** Acts 1969, No. 465, Art. 6, § 1; A.S.A. 1947, § 3-601; Acts 1993, No. 717, §§ 1, 3; 1995, No. 876, § 1; 1995 (1st Ex. Sess.), No. 7, § 1; 1997, No. 451, § 1; 1999, No. 455, § 1; 2003, No. 1165, § 2; 2003, No. 1295, § 2; 2007, No. 694, § 1; 2009, No. 250, § 3; 2009, No. 1480, § 15.

**Amendments.** The 2007 amendment redesignated former (a)(2)(A) as present (a)(2)(A)(i); added (a)(2)(A)(ii); redesign-

nated former (a)(2)(B) as present (a)(2)(B)(i); added (a)(2)(B)(ii); and added (e)

The 2009 amendment by No. 250 substituted "establish" for "fix" or variant in three places in (a)(2)(A), and made minor stylistic changes.

The 2009 amendment by No. 1480 rewrote the section.

## CASE NOTES

### ANALYSIS

#### Allegations.

Inaccurate Precinct Boundaries.

Lack of Formal Order.

School Districts.

#### Allegations.

Where complainant's only allegation of irregularity in local option election was that the election was invalid because there was no duly established precinct known as Union Precinct in existence as required by this section, allegation was a conclusion of law and not a statement of facts upon which relief could be granted and complaint was dismissed without prejudice. *Spires v. Members of Election Comm'n*, 302 Ark. 407, 790 S.W.2d 167 (1990).

#### Inaccurate Precinct Boundaries.

Where the minutes of the meeting of a county election commission did not intelligently and accurately set out the boundaries of proposed precincts, which were to exist only for the upcoming general election, the precincts were not validly established in the manner required by this section. *Glover v. Russell*, 260 Ark. 609, 542 S.W.2d 751 (1976).

#### Lack of Formal Order.

Where the challenged election precinct had existed in fact through at least three

elections, its boundaries had not been questioned by anyone, and it had been recognized by the election officials and voters as a valid precinct, the lack of a formal order approving the creation of the new precinct was a mere technicality, and the precinct was a valid legal precinct. *Goodall v. Adams*, 277 Ark. 261, 640 S.W.2d 803 (1982).

Because the complainants did not seek to remedy a precinct boundary problem until after the election, the requirement of filing an order describing precinct's boundaries became directory, not mandatory. *Spires v. Compton*, 310 Ark. 431, 837 S.W.2d 459 (1992).

#### School Districts.

School districts being political townships for the purpose of school elections, general election law governed conduct of such elections and required the county board of election commissioners to lay out and designate the voting precincts in the school districts. *Christenson v. Felton*, 226 Ark. 985, 295 S.W.2d 361 (1956) (decision under prior law).

The designation of voting precincts in a school district election, mandatory before election, became directory after the election so that voters otherwise qualified would not be disfranchised by failure of the election commissioners to perform their duties and so that votes of such



voters would be counted. *Christenson v. Felton*, 226 Ark. 985, 295 S.W.2d 361 (1956) (decision under prior law).

Although as a general rule a voter must vote in the ward or precinct in which he resides, votes of otherwise qualified voters in a school district election in which the election commissioners failed to designate

voting precincts are not void because cast in the wrong precinct for in the absence of designated precincts there could be no showing of voting in the wrong precincts. *Christenson v. Felton*, 226 Ark. 985, 295 S.W.2d 361 (1956) (decision under prior law).

### 7-5-102. Time of general election.

On the Tuesday next after the first Monday in November in every even-numbered year, there shall be held an election in each precinct and ward in this state for the election of all elective state, county, and township officers whose term of office is fixed at two (2) years by the Arkansas Constitution or the General Assembly; for state senators in their respective districts when the terms for which the state senators have been elected expire before the next general election; for Representatives in the Congress of the United States for each congressional district in this state; for United States Senators when the term of office of any United States Senator expires before the next general election; and for prosecuting attorney in this state.

**History.** Acts 1969, No. 465, Art. 6, § 2; A.S.A. 1947, § 3-602; Acts 1993, No. 512, § 1; 2005, No. 67, § 5.

### CASE NOTES

**Cited:** *Rock v. Byrant*, 459 F. Supp. 64 (E.D. Ark. 1978); *Johnson County Bd. of Election Comm'rs v. Holman*, 280 Ark. 128, 655 S.W.2d 408 (Ark. 1983).

### 7-5-103. [Repealed.]

**Publisher's Notes.** This section, concerning special elections, was repealed by Acts 2009, No. 1480, § 16. This section was derived from Acts 1969, No. 465, Art. 6, § 3; A.S.A. 1947, § 3-603; Acts 2003, No. 1441, § 1; 2005, No. 2145, § 11; 2007, No. 1049, § 13; 2009, No. 26, § 1; 2009, No. 375, § 1.

### 7-5-104. Election expenses — Allocation.

(a)(1) All expenses of general elections for presidential, congressional, state, district, county, township, or municipal offices in this state shall be paid by the counties in which they are held.

(2) However, any city or incorporated town shall reimburse the county board of election commissioners for the expenses of the elections in an amount equal to a figure derived by multiplying fifty percent (50%) of the total cost of each election by a fraction, the numerator of which shall be the number of voters from the city or incorporated town casting ballots in each election prepared by the county board, and the denominator of which shall be the total number of voters casting ballots in each election.

(b)(1) Except for the expense of party primary elections under § 7-7-201 et seq., all expenses for special elections, including runoff elections as required by law, for congressional, state, district, county, and township offices shall be paid by the counties in which they are held.

(2) All expenses of special elections, including any runoff elections as required by law, for municipal offices shall be paid by the city or incorporated town calling for the elections.

(3) All expenses of special elections called by any county for the purpose of referring a question or measure to the voters of the county shall be paid by the county.

(4) All expenses of special elections called by any city or incorporated town for the purpose of referring a question or measure to the voters of the city or incorporated town shall be paid by the city or incorporated town.

**History.** Acts 1992 (1st Ex. Sess.), No. 67, § 2; 2005, No. 1205, § 1.

**Publisher's Notes.** Former § 7-5-104, concerning allocation of election expenses was repealed by Acts 1992 (1st Ex. Sess.),

No. 67, § 1. The former section was derived from Acts 1969, No. 465, Art. 6, § 9; A.S.A. 1947, § 3-609; Acts 1991, No. 921, § 1.

### 7-5-105. [Repealed.]

**Publisher's Notes.** This section, concerning payment to county clerk for registered voter lists, was repealed by Acts 1997, No. 451, § 17. The section was de-

rived from Acts 1969, No. 465, Art. 13, § 4; A.S.A. 1947, § 3-1304; Acts 1993, No. 1092, § 2; 1995, No. 924, § 1; 1995, No. 937, § 1. For present law, see § 7-5-109.

### 7-5-106. Runoff elections for county and municipal officers.

(a)(1) If there are more than two (2) candidates for election to any county elected office, including the office of justice of the peace, at any general election held in this state and no candidate for the county elected office receives a majority of the votes cast for the county elected office, there shall be a runoff general election held in that county three (3) weeks following the date of the general election at which the names of the two (2) candidates receiving the highest number of votes, but not a majority, shall be placed on the ballot to be voted upon by the qualified electors of the county.

(2)(A) The following procedure will govern if there are more than two (2) candidates for election to any municipal office at any general election held in this state in which no candidate for the municipal office receives either:

(i) A majority of the votes cast; or

(ii) A plurality of forty percent (40%) of the votes cast.

(B)(i) A candidate who receives a plurality of forty percent (40%) of the votes cast must obtain at least twenty percent (20%) more of the votes cast than the second-place candidate for the municipal office to avoid a runoff general election against the second-place candidate.

(ii) If required, the runoff general election between the two (2) candidates shall be held in that municipality three (3) weeks following the date of the general election with the names of the two (2) candidates placed on the ballot to be voted upon by the qualified electors of the municipality.

(b) If two (2) candidates receive the highest number of votes and receive the same number of votes, a tie is deemed to exist and the names of the two (2) candidates shall be placed on the runoff general election ballot to be voted upon by the qualified electors of the county or the municipality, as the case may be.

(c)(1) If there is one (1) candidate who receives the highest number of votes, but not a majority of the votes, and two (2) other candidates receive the same number of votes for the next highest number of votes cast, a tie is deemed to exist between the two (2) candidates.

(2) The county board of election commissioners shall determine the runoff candidate by lot at a public meeting and in the presence of the two (2) candidates.

(d) If one (1) of the two (2) candidates who received the highest number of votes for a county elected office or a municipal office but not a majority of the votes in a county for a county elected office or either a majority or both forty percent (40%) of the votes cast and at least twenty percent (20%) more of the votes cast than the second-place candidate in a municipality for a municipal office in the general election withdraws before certification of the result of the general election, the remaining candidate who received the most votes at the general election shall be declared elected to the county elected office or municipal office and there shall be no runoff general election.

(e)(1) The person receiving the majority of the votes cast for the county elected office or municipal office at the runoff general election shall be declared elected.

(2) However, if the two (2) candidates seeking election to the same county elected office or municipal office receive the same number of votes in the runoff general election, a tie is deemed to exist, and the county board shall determine the winner of the runoff general election by lot at an open public meeting and in the presence of the two (2) candidates.

(f)(1) As used in this section, "municipal office" means offices of cities of the first class and cities of the second class and incorporated towns and includes the offices of aldermen, members of boards of managers, or other elective municipal offices elected by the voters of the entire municipality or from wards or districts within a municipality.

(2) "Municipal office" does not include offices of cities having a city manager form of government.

(g) This section does not apply to election of members of the boards of directors and other officials of cities having a city manager form of government.

(h) This section is intended to be in addition to and supplemental to the laws of this state pertaining to the election of officers for county elected offices and municipal offices at general elections.



**History.** Acts 1983, No. 909, §§ 1, 2; A.S.A. 1947, §§ 3-616, 3-617; Acts 1991, No. 53, § 1; 1997, No. 451, § 3; 1999, No. 554, § 1; 2003, No. 1165, § 3; 2007, No. 1049, § 14; 2011, No. 1211, § 1.

**Amendments.** The 2007 amendment inserted present (d), and redesignated the following subdivisions accordingly.

The 2011 amendment, in (a)(1), deleted “or for any municipal office” preceding “at any general election,” substituted “for the county elected office” for “for the municipi-

pal or county office,” substituted “votes cast for the county elected office” for “votes cast for the office,” substituted “election held in that county” for “election held in that county or municipality,” and deleted “or the municipality, as the case may be” following “qualified electors of the county”; inserted (a)(2); rewrote (d); inserted “county elected office or municipal” in (e)(1); inserted “elected office” and “general” in (e)(2); and rewrote (f) through (h).

## CASE NOTES

### ANALYSIS

Constitutionality.

Applicability.

Municipal Officers.

#### Constitutionality.

This statute represents a systematic and deliberate attempt to reduce black political opportunity. Such an attempt is plainly unconstitutional. It replaces a system in which blacks could and did succeed with one in which they almost certainly cannot. The inference of racial motivation is inescapable. *Jeffers v. Clinton*, 740 F. Supp. 585 (E.D. Ark. 1990), appeal dismissed, 498 U.S. 1129, 111 S. Ct. 1096 (1991).

The exception contained in subsection (b) is not violative of Ark. Const. Amend. 14. *Henry v. Pulaski County Election Comm’n*, 319 Ark. 353, 891 S.W.2d 61 (1995).

#### Applicability.

This section refers specifically to “general elections,” not “special elections,” and

if the General Assembly intended for the runoff provisions to apply to all elections, general and special, it could have so stated instead of using limiting language. *Allen v. Lincoln County Election Comm’n*, 789 F. Supp. 976 (E.D. Ark. 1992).

#### Municipal Officers.

Subsection (b) is a general law which applies with equal impact upon all cities having a city manager form of government; thus, considering the presumptive validity to be given this section, there is no reason why the General Assembly cannot provide a vote requirement for electing a municipal judge in all cities having a city manager form of government different from vote requirements for judges of cities having other types of city government. *Henry v. Pulaski County Election Comm’n*, 319 Ark. 353, 891 S.W.2d 61 (1995).

## 7-5-107. Use of voter registration lists by poll workers.

(a) In any election conducted in this state, precinct voter registration lists shall be used by poll workers in each polling place.

(b) Precinct voter registration lists shall contain the name, address including zip code, and date of birth of each registered voter within the precinct, including those who have been designated inactive, the precinct number and county wherein the precinct is located, the name and date of the election, and a space for the voter’s signature.

(c) The following shall be printed at the top of each page of the precinct voter registration list:

“IF YOU SIGN THIS FORM AND YOU ARE NOT A LAWFULLY REGISTERED VOTER, YOU ARE MAKING A FALSE STATEMENT

AND MAY BE COMMITTING PERJURY. PERJURY IS PUNISHABLE BY UP TO A \$10,000 FINE AND UP TO 10 YEARS IMPRISONMENT."

**History.** Acts 1993, No. 487, § 1; 1995, No. 946, § 2; 1995, No. 963, § 2; 2009, No. 959, § 3.

**Amendments.** The 2009 amendment

substituted "poll workers" for "election officials" in the section head and in (a); and substituted "polling place" for "precinct" in (a).

### RESEARCH REFERENCES

**ALR.** Validity of Statute Providing for Purging Voter Registration Lists of Inactive Voters. 51 A.L.R.6th 287.

### 7-5-108. [Repealed.]

**Publisher's Notes.** This section, concerning the time of runoff elections, was repealed by Acts 1997, No. 451, § 4. The

section was derived from Acts 1993, No. 966, § 3.

### 7-5-109. Computerized voter registration lists.

(a) The county clerks of the several counties of the state may reproduce the registered voter list maintained by the county clerk in any format that the office of the county clerk is capable of providing.

(b) The county clerks shall be entitled to a fee in connection with the preparation of any registered voter list that shall reimburse the county clerk for reproduction expenses. The value of office equipment previously secured for the office of the county clerk shall not be considered when determining the amount of this fee.

(c)(1)(A) Upon request every county clerk who maintains on computer the list of registered voters within the county shall provide the list on computer disk or tape.

(B) The list shall include at least the names, addresses, and precinct numbers of the voters.

(2)(A) The fee for a list, on computer disk or tape, of one (1) to five thousand (5,000) registered voters may be up to ten dollars (\$10.00).

(B) The fee for a list, on computer disk or tape, of five thousand one (5,001) to twenty-five thousand (25,000) registered voters may be up to twenty-five dollars (\$25.00).

(C) The fee for a list, on computer disk or tape, of more than twenty-five thousand (25,000) registered voters may be up to fifty dollars (\$50.00).

(3) If a printed list is requested, the cost of the list may be no more than two cents (2¢) per name and address.

**History.** Acts 1993, No. 1161, § 1; 1995, No. 924, § 2; 1995, No. 937, § 2; 1997, No. 451, § 5; 1999, No. 651, § 1.

### 7-5-110. Registration lists for each ballot combination.

In any precinct with more than one (1) ballot combination, the county clerk shall prepare precinct voter registration lists that identify the district, subdistrict, county, municipality, ward, and school zone in which each voter is qualified to vote.

**History.** Acts 1995, No. 672, § 1; 1997, No. 451, § 6.

## SUBCHAPTER 2 — PREELECTION PROCEEDINGS

### SECTION.

- 7-5-201. Voter qualification.
- 7-5-202. Public notice of elections.
- 7-5-203. Certification of candidate lists.
- 7-5-204. Certification of measures and questions submitted to voters.
- 7-5-205. Write-in candidates' votes — When counted.

### SECTION.

- 7-5-206. Publication requirements.
- 7-5-207. Ballots — Names included — Draw for ballot position.
- 7-5-208. Ballots — Form.
- 7-5-209. Ballots — Correction of errors.
- 7-5-210. [Repealed.]
- 7-5-211. Delivery of election supplies.
- 7-5-212. [Repealed.]

**Effective Dates.** Acts 1969, No. 465, Art. 13, § 10: approved Apr. 17, 1969. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the present election laws are ancient and outdated in part and have caused and are causing much confusion and controversy, that there are particular problem areas in the present law which need immediate legislation in order to resolve same, that elections are and will continue to be held and conducted in this atmosphere of confusion and controversy until these problem areas are resolved and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in force and effect from and after its passage."

Acts 1971, No. 725, § 3: Apr. 28, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present laws of this state, a person may, under certain circumstances, become a candidate for a public office which such person is not qualified and eligible to hold even if such person were elected to the office; that it is essential to the proper administration of the election laws of this state that legislation be enacted immediately to prohibit inclu-

sion on the ballot of the name of any person as a candidate for any public office, if such person would not be qualified and eligible to fill such office if elected, and that this act is designed to correct this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 157, § 10: Feb. 20, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present laws of the state, that separate or common polling places cannot be established by county committees in counties using voting machines without attendant substantial costs; that it is essential to the proper and economical administration of the election laws of this state that legislation be enacted immediately to provide that respective county committees or county elections commissions in counties using voting machines may designate separate and/or common polling places where all elections can be held and to provide for a minimum number of election officials to serve at such polling places so that substantial economies can be realized in the conduct of such elections. Therefore an emergency



is declared to exist and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Identical Acts 1995, Nos. 930 and 941, § 3: Jan. 1, 1996.

Identical Acts 1995, Nos. 946 and 963, § 14: Jan. 1, 1996.

Acts 2001, No. 1789, § 12: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly that Amendment 80 to the Arkansas Constitution becomes effective on July 1, 2001; that this implements the nonpartisan election of justices and judges as mandated by Amendment 80; and that to effectively implement Amendment 80, this act should become effective on July 1, 2001. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective on July 1, 2001."

Acts 2005, No. 2233, § 48: Jan. 1, 2006.

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 1185, § 21: Oct. 2, 2011.

## RESEARCH REFERENCES

**Am. Jur.** 25 Am. Jur. 2d, Elections, § 52 et seq.  
26 Am. Jur. 2d, Elections, § 183 et seq.

**C.J.S.** 29 C.J.S., Elections, §§ 14-35, 68-82, and 152 et seq.

## 7-5-201. Voter qualification.

(a) To be qualified to vote, a person shall have registered at least thirty (30) calendar days immediately prior to the election and in the manner set forth by Arkansas Constitution, Amendment 51.

(b) "Voting residence" shall be a voter's domicile and shall be governed by the following provisions:

(1) The domicile of a person is that place in which his or her habitation is fixed to which he or she has the intention to return whenever he or she is absent;

(2) A change of domicile is made only by the act of abandonment, joined with the intent to remain in another place. A person can have only one (1) domicile at any given time;

(3) A person does not lose his or her domicile if he or she temporarily leaves his or her home and goes to another country, state, or place in this state with the intent of returning;

(4) The place where a person's family resides is presumed to be his or her place of domicile, but a person may acquire a separate residence if he or she takes another abode with the intention of remaining there;

(5) A married person may be considered to have a domicile separate from that of his or her spouse for the purposes of voting or holding office. For those purposes, domicile is determined as if the person were single; and

(6) Persons who are temporarily living in a particular place because of a temporary work-related assignment or duty post or as a result of their performing duties in connection with their status as military personnel, students, or office holders shall be deemed residents of that place where they established their home prior to beginning such assignments or duties.

(c) No person may be qualified to vote in more than one (1) precinct of any county at any one (1) time.

(d)(1) Any person registering to vote by mail and who has not previously voted in a federal election in this state shall:

(A) Present to the election official a current and valid photo identification or copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter when appearing to vote in person either early or at the polls on election day; or

(B) When voting by mail, submit with the ballot a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(2) The provision of subdivision (d)(1) of this section does not include:

(A) Persons whose applications are transmitted by state or federal voter registration agencies;

(B) Persons who are covered by the Uniformed and Overseas Citizens Absentee Voting Act;

(C) Persons covered by the Voting Accessibility for the Elderly and Handicapped Act;

(D) Persons who are entitled to vote otherwise than in person under any other federal law;

(E) Persons who register to vote by mail and submit as part of the registration any of the identification documents listed in subdivision (d)(1) of this section; or

(F) Persons who register to vote by mail and submit with the registration either a driver's license number or at least the last four (4) digits of the individual's social security number and with respect to whom a state or local election official matches the license number or social security number with an existing state identification record bearing the same number, name, and date of birth as provided in the registration.

(e) Any person who receives an absentee ballot according to the precinct voter registration list but who elects to vote by early voting or to vote at his or her polling site on election day shall be permitted to cast a provisional ballot.

**History.** Acts 1969, No. 465, Art. 7, § 7; A.S.A. 1947, § 3-707; Acts 1987, No. 248, § 7; 1993, No. 716, § 1; 1995, No. 930, § 2; 1995, No. 941, § 2; 1999, No. 1462, § 1; 1999, No. 1471, § 1; 2003, No. 994, § 2; 2005, No. 2193, § 1; 2007, No. 560, § 2.

**Publisher's Notes.** Acts 1969, No. 465, Art. 7, § 7, originally required that to be qualified to vote a person was to have been a resident of the state for one year, of the county for six months, and of the precinct for thirty days. The one year and the six months requirements were held unconstitutional in *Smith v. Climer*, 341 F. Supp.

123 (1972), and the thirty day requirement was held unconstitutional in *Meyers v. Jackson*, 390 F. Supp 37, (1975). Acts 1987, No. 248 removed the statutory residency requirements.

**Amendments.** The 2007 amendment deleted the second sentence in (a).

**U.S. Code.** The Uniformed and Overseas Citizens Absentee Voting Act, referred to in this section, is codified as 42 U.S.C. § 1973ff-1 et seq. The Voting Accessibility for the Elderly and Handicapped Act is codified as 42 U.S.C. § 1973ee et seq.

## RESEARCH REFERENCES

**ALR.** Constitutionality of voter participation provisions for primary elections. 120 A.L.R.5th 125.

Validity of Statute Requiring Proof and Disclosure of Information as Condition of Registration to Vote. 48 A.L.R.6th 181.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Election Law, Help America Vote Act, 26 U. Ark. Little Rock L. Rev. 398.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Absentee Voting.  
Legislative Additions.  
Oath Requirement.  
Residency Requirements.  
Term Limits.

### Constitutionality.

The requirements of one year's residence in state and at least six months' residence in the county which formerly appeared in this section were violative of the U.S. Const., Amend. 14, were unconstitutional and could not be enforced. *Smith v. Climer*, 341 F. Supp. 123 (E.D. Ark. 1972).

The 30-day precinct residency requirement which formerly appeared in this section was unconstitutionally discriminatory in that it did not promote any compelling state interest, unreasonably restricted the right of suffrage and was overbroad. *Meyers v. Jackson*, 390 F. Supp. 37 (E.D. Ark. 1975).

### Absentee Voting.

Where named voters in the instant case did not vote in person for the first time,

but registered by mail to vote by absentee ballot and voted by absentee ballot for the first time, that practice was in clear violation of subdivision (d)(1) and the trial court did not err in ruling that their ballots were disqualified and that their votes would not count in the subsequent runoff election. *Tate-Smith v. Cupples*, 355 Ark. 230, 134 S.W.3d 535 (2003).

### Legislative Additions.

Where the Constitution fixes the qualifications for voters, those qualifications cannot be added to by legislative enactment. *Rison v. Farr*, 24 Ark. 161 (1865) (decision under prior law).

### Oath Requirement.

Legislature could require voter to take an oath that he or she would support the Constitution of the state and the United States where the oath was prospective in its operation but, requirement that voter take oath that he or she had not voluntarily borne arms against United States or state was retroactive and unconstitutional as placing requirements on voters in addition to those prescribed by the Constitution. *Rison v. Farr*, 24 Ark. 161 (1865) (decision under prior law).



**Residency Requirements.**

Durational residency requirements cannot be upheld except to the extent they are realistically related to reasonable registration requirements. *Meyers v. Jackson*, 390 F. Supp. 37 (E.D. Ark. 1975).

**Term Limits.**

A county initiative setting terms limits for county officials was unlawful and invalid as it conflicted with the general law of the state. *Allred v. McLoud*, 343 Ark. 35, 31 S.W.3d 836 (2000).

**7-5-202. Public notice of elections.**

(a) It shall be the duty of the county board of election commissioners at least twenty (20) days before each preferential primary and general election and at least ten (10) days before the holding of each general primary, general runoff, or special election to give public notice in a newspaper of general circulation in the county of:

- (1) The date of the election;
- (2) The hours of voting on election day;
- (3) The places and times for early voting;
- (4) Polling sites for holding the elections in the county;
- (5) The candidates and offices to be elected at that time; and
- (6) The time and location of the opening, processing, canvassing, and counting of ballots.

(b)(1) At least five (5) days prior to a preferential primary, general primary, general election, general runoff, or special election, a copy of the public notice may be posted at each polling site fixed for holding the election and shall be published in a newspaper of general circulation in the county.

(2) At least fifteen (15) days prior to the election, each county board shall prepare and post in a public place in the county clerk's office its list of appointed election officials.

(c) On the day of any election, the following shall be posted at each polling site and remain posted continuously therein until the polls close:

- (1) The public notice required in subsection (a) of this section;
- (2) At least two (2) sample ballots, marked with the word "SAMPLE", of each ballot style that will be used at the polling site;
- (3) Two (2) copies of the full text of all measures on the ballot;
- (4) At least two (2) copies of instructions on how to vote, including how to cast a provisional ballot and instructions for fail-safe voting;
- (5) General information on voting rights under applicable federal and state laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated;
- (6) General information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation;
- (7)(A) Double-sided signs containing the words "VOTE HERE".

(B) Each sign shall be at least two feet (2') by two feet (2') in size and shall contain an arrow pointing to the polling site.

(C) A sign shall be posted near each main driveway entrance to the polling site on each public street bordering the polling site so as to be visible to all traffic approaching the polling site.

(D) The sign shall be as close as possible to the public street without obstructing traffic; and

(8) One (1) printout from each voting machine showing whether the candidate and question counters register zero (0).

(d) The Secretary of State shall provide to each county board of election commissioners and each county clerk the information to be posted at each polling site according to subdivisions (c)(5) and (6) of this section.

**History.** Acts 1969, No. 465, Art. 6, §§ 4, 5; A.S.A. 1947, §§ 3-604, 3-605; Acts 1997, No. 451, § 7; 1999, No. 1490, § 3; 2001, No. 474, § 1; 2003, No. 994, § 3; 2005, No. 138, § 1; 2005, No. 1677, § 3; 2007, No. 222, § 4; 2007, No. 556, § 1.

**Amendments.** The 2007 amendment by No. 222 deleted "absentee" preceding "ballots" in (a)(5); added (b)(2) and made a related change; deleted "information" preceding "shall be" in the introductory paragraph of (c); in (c)(2), substituted "At least two (2)" for "A" and "ballots, marked with

the word 'SAMPLE', of each ballot style that will be used at the polling site" for "version of the ballot or ballots, that will be used for that election"; inserted present (c)(3) and redesignated the remaining subsections accordingly; rewrote (c)(4); added (c)(7) and (c)(8) and made related changes; and substituted "(c)(5) and (6)" for "(c)(4) and (5)" in (d).

The 2007 amendment by No. 556 added (a)(3) and redesignated the remaining subsections accordingly; and deleted "absentee" preceding "ballots" in (a)(6).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General As-

sembly, Election Law, Help America Vote Act, 26 U. Ark. Little Rock L. Rev. 398.

## CASE NOTES

### ANALYSIS

Applicability.

Compliance.

Failure to Give Notice.

Inadequate Advertisement.

### Applicability.

Former similar law applied to elections to fill vacancies in certain offices and did not apply to a city ordinance referred to the people under constitutional amendment. *Cowling v. Foreman*, 238 Ark. 677, 384 S.W.2d 251 (1964) (decision under prior law).

### Compliance.

Strict compliance with notice requirement may be enforced prior to an election, but substantial compliance therewith is sufficient where the great body of the electors are apprised of the fact that an election is to be held. *Whitaker v. Mitchell*, 179 Ark. 993, 18 S.W.2d 1026 (1929) (decision under prior law).

### Failure to Give Notice.

An election was not invalid for failure to comply with former section where the county court's order calling the election was twice published in a county newspaper, and it was apparent from the number of votes cast that the great body of electors had notice of the election. *Whitaker v. Mitchell*, 179 Ark. 993, 18 S.W.2d 1026 (1929) (decision under prior law).

The people may not be deprived of their right of suffrage due to the failure of officials to perform their ministerial duties to publish notice of the time and place of the election and the question to be submitted. *Thompson v. Arkansas*, 114 F.2d 351 (8th Cir. 1940) (decision under prior law).

Where there was no action taken to enforce strict compliance with former similar section before an election, which was thoroughly publicized for eight days prior to the holding thereof, the court was justified in refusing to nullify the election after it was held for failure to give 10 days'

notice. *Cowling v. Foreman*, 238 Ark. 677, 384 S.W.2d 251 (1964) (decision under prior law).

**Inadequate Advertisement.**

Where election on question was not properly advertised and less than one-

eighth of voters voted on it, evidence supported finding that there was no valid election on the question. *Starrett v. Andrews*, 195 Ark. 1078, 115 S.W.2d 549 (1938) (decision under prior law).

**7-5-203. Certification of candidate lists.**

(a)(1) Not less than seventy-five (75) days before each general election day, the Secretary of State shall certify to all county boards of election commissioners full lists of all candidates to be voted for in their respective counties as the nominations have been certified or otherwise properly submitted to him or her.

(2) A name of a person shall not be certified and shall not be placed on the ballot if prior to the certification deadline a candidate on the list:

(A) Notifies the Secretary of State in writing, signed by the candidate and acknowledged before an officer authorized to take acknowledgements, of his or her desire to withdraw as a candidate for the office or position; or

(B) Dies.

(b)(1) Not less than seventy-five (75) days before each general election day, the clerk of each county shall certify to the county board of his or her county a full list of all candidates to be voted for in the county as the nominations have been certified or otherwise properly submitted to him or her.

(2) A name of a person shall not be certified and shall not be placed on the ballot if prior to the certification deadline a candidate on the list:

(A) Notifies the county clerk in writing, signed by the candidate and acknowledged before an officer authorized to take acknowledgements, of his or her desire to withdraw as a candidate for the office or position; or

(B) Dies.

(c) However, in special elections held to fill vacancies or to elect officers in case of a tie vote, the certification shall issue at the time specified in the writ of election issued by the appropriately constituted authority.

**History.** Acts 1969, No. 465, Art. 6, § 6; 1985, No. 1055, § 2; A.S.A. 1947, § 3-606; Acts 1997, No. 451, § 8; 1999, No. 1490, § 4; 2005, No. 67, § 6; 2007, No. 1049, § 18; 2009, No. 1480, § 17; 2011, No. 1185, § 3.

**Amendments.** The 2007 amendment substituted "seventy-five (75)" for "fifty (50)" in (a) and (b).

The 2009 amendment rewrote (a) and (b).

The 2011 amendment substituted "seventy-five (75)" for "seventy (70)" in (a)(1) and (b)(1); inserted "properly" in (a)(1) and (b)(1); and inserted "deadline" in (a)(2) and (b)(2).

**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.



## CASE NOTES

**Cited:** Christian Populist Party v. Secretary of State, 650 F. Supp. 1205 (E.D. Ark. 1986).

### 7-5-204. Certification of measures and questions submitted to voters.

(a) Whenever a proposed amendment to the Arkansas Constitution or other measure or question is to be submitted to a vote of the people, the Secretary of State shall not certify the amendment, measure, or question to the county board of election commissioners of each county in the state less than seventy-five (75) days before each general election day.

(b) The county board shall include the amendment, measure, or question in the posting that it is required to make under § 7-5-206.

(c)(1) If the Secretary of State has not determined the sufficiency of a petition for an amendment or a measure by the seventy-fifth day before the general election or if an amendment or a measure has been challenged for any reason in a court of competent jurisdiction, the Secretary of State shall nonetheless transmit the amendment or measure and the ballot title of each amendment and measure to the county election commissions to make any required posting and to place the amendment or measure on the ballot.

(2) If the petition for the amendment or measure is subsequently declared insufficient by the Secretary of State or a court of competent jurisdiction or if held to be invalid for any other reason, no votes regarding the amendment or measure shall be counted or certified.

**History.** Acts 1969, No. 465, Art. 6, § 7; A.S.A. 1947, § 3-607; Acts 1997, No. 451, § 9; 1999, No. 1490, § 5; 2007, No. 222, § 5; 2007, No. 1049, § 19; 2009, No. 959, § 4; 2011, No. 1185, § 4.

**Amendments.** The 2007 amendment by No. 222 inserted “measures and” in the section heading; inserted “measure or,” substituted “sixty (60)” for “fifty (50),” “measure, or” for “in,” “measure, or question” for “in question,” and deleted the last sentence.

The 2007 amendment by No. 1049 subdivided the text into (a) and (b); in present

(a), inserted “measure or” in two places, and substituted “seventy (70)” for “fifty (50)”; deleted the former last sentence in present (b); added (c); and made related changes.

The 2009 amendment inserted “nonetheless” in (c)(1), and made a minor punctuation change.

The 2011 amendment substituted “seventy-five (75)” for “seventy (70)” in (a); and substituted “seventy-fifth” for “seventieth” in (c)(1).

**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.

## CASE NOTES

#### Purpose.

The purpose of former similar law was to advise the election commissioners of the questions to the end that the ques-

tions might be placed on the ballot. *Fulkerson v. Refunding Bd.*, 201 Ark. 955, 201 Ark. 957, 147 S.W.2d 980 (1941) (decision under prior law).

### 7-5-205. Write-in candidates' votes — When counted.

No votes for write-in candidates shall be counted or tabulated unless:

(1) The candidate notifies in writing the county board of election commissioners of each county in which the candidate seeks election and files the notice with either:

(A) The Secretary of State, if a candidate for United States Senate, United States House of Representatives, or any state or district office; or

(B) The county clerk if a candidate for a county or township office;

(2) The candidate files with the county clerk or the Secretary of State, as required, a political practices pledge and an affidavit of eligibility for the office at the same time the candidate files his or her notice of write-in candidacy;

(3) The notice of write-in candidacy, the political practices pledge, and the affidavit of eligibility are filed no later than the last day of the party filing period; and

(4) The name written on the ballot is the same name listed on the write-in candidate's political practices pledge, except that any abbreviation, misspelling, or other minor variation in the form of the name of the candidate shall be disregarded if the intention of the voter may be ascertained.

**History.** Acts 1969, No. 465, Art. 6, § 14; 1985, No. 1055, § 1; A.S.A. 1947, § 3-614; Acts 1987, No. 247, § 1; 1987, No. 933, § 1; 1989, No. 912, § 1; 1997, No. 451, § 10; 1999, No. 640, § 1; 2001, No. 955, § 1; 2001, No. 1789, § 4; 2003, No. 542, § 2; 2003, No. 1165, § 4; 2007, No. 222, § 6; 2009, No. 1480, § 18; 2011, No. 1185, § 5.

**Amendments.** The 2007 amendment inserted "of each county in which the candidate seeks election" in (a)(1).

The 2009 amendment rewrote the section.

The 2011 amendment substituted "no later than the last day of the party filing period" for "no earlier than noon on the last day of the party filing period and not later than ninety (90) days before the election day" in (3).

**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Election Law, 24 U. Ark. Little Rock L. Rev. 465.

### CASE NOTES

**Cited:** Lendall v. Bryant, 387 F. Supp. 397 (E.D. Ark. 1975).

### 7-5-206. Publication requirements.

The county board of election commissioners shall make publication of all nominations, of all proposed amendments to the Arkansas Constitution, and of all other measures and questions required by law to be submitted to the electors at any election by posting a list thereof at the

door of the courthouse at least ten (10) days before the day of the election.

**History.** Acts 1969, No. 465, Art. 6, § 8; A.S.A. 1947, § 3-608; Acts 1995, No. 497, § 2; 1995, No. 1085, § 2; 1997, No. 451, § 11; 2005, No. 67, § 7; 2007, No. 222, § 7; 2007, No. 1020, § 2; 2009, No. 959, § 5.

**Amendments.** The 2007 amendment by No. 222 substituted “measures and questions” for “questions.”

The 2007 amendment by No. 1020 deleted former (b).

The 2009 amendment deleted “filed with it, of all nominations certified to it by the Secretary of State” following “all nominations,” deleted “certified to it by the Secretary of State or” following “questions,” and made a related change.

### **7-5-207. Ballots — Names included — Draw for ballot position.**

(a)(1) Except as provided in subdivisions (a)(2) and (3) of this section, all election ballots provided by the county board of election commissioners of any county in this state for any election shall contain in the proper place the name of every candidate whose nomination for any office to be filled at that election has been certified to the county board and shall not contain the name of any candidate or person who has not been certified.

(2)(A) Except as provided in subdivision (a)(2)(B) of this section, unopposed candidates for municipal offices shall be declared and certified elected without the necessity of including those names on the general election ballot.

(B) The names of all unopposed candidates for the office of mayor shall be separately placed on the general election ballot, and the votes for mayor shall be tabulated as in all contested races.

(3)(A)(i) Except as provided in subdivision (a)(3)(B) of this section, the names of all other unopposed candidates for all offices, including without limitation the names of all unopposed write-in candidates, shall be grouped together on the ballot indicating the office and the name of the unopposed candidate.

(ii) The phrase “Unopposed Candidates” shall appear at the top of the list of the names of all unopposed candidates.

(iii) Adjacent to the phrase “Unopposed Candidates” shall be a place in which the voter may cast a vote for all the candidates by placing an appropriate mark.

(B) The names of all unopposed candidates for the office of circuit clerk shall be separately placed on the general election ballot, and the votes for circuit clerk shall be tabulated as in all contested races.

(b) No person’s name shall be placed upon the ballot as a candidate for any public office in this state at any election unless the person is qualified and eligible at the time of filing, or as otherwise may be provided by law, as a candidate for the office to hold the public office for which he or she is a candidate, except if a person is not qualified to hold the office at the time of filing because of age alone, the name of the person shall be placed on the ballot as a candidate for the office if the person will qualify to hold the office at the time prescribed by law for taking office.



(c)(1) The order in which the names of the candidates shall appear on the ballot shall be determined by lot at a public meeting of the county board not less than seventy-two (72) days before the general election.

(2) Notice of the public meeting shall be given by publication in a newspaper of general circulation in the county at least three (3) days before the drawing.

(3) For runoff elections, the ballot order for eligible candidates shall be the same as for the previous election leading to the runoff.

(d)(1) Beside or adjacent to the name of each candidate in the general election shall be:

(A) His or her party designation; or

(B) The term "INDEPENDENT" if he or she represents no officially recognized party.

(2) Subdivision (d)(1) of this section shall not apply to a:

(A) Nonpartisan judicial election; or

(B) Nonpartisan municipal election.

**History.** Acts 1969, No. 465, Art. 6, § 13; 1971, No. 224, § 1; 1971, No. 261, §§ 20, 22; 1971, No. 355, §§ 1-3; 1971, No. 725, § 1; 1979, No. 389, § 1; A.S.A. 1947, §§ 3-613, 3-615; Acts 1997, No. 451, § 12; 2007, No. 1049, § 15; 2009, No. 959, § 6; 2009, No. 1480, § 19; 2011, No. 1185, § 6.

**Amendments.** The 2007 amendment substituted "no later than seventy (70) days before the election" for "prior to the printing of the ballots" in (a), and made related changes.

The 2009 amendment by No. 959 inserted "or as otherwise may be provided by law" in (b), and made related and minor stylistic changes.

The 2009 amendment by No. 1480 rewrote (a); substituted "placed" for "printed" twice in (b); and added (c) and (d).

The 2011 amendment substituted "seventy-two (72)" for "sixty-five (65)" in (c)(1).

**Effective Dates.** Acts 2011, No. 1185, § 21; Oct. 2, 2011.

## RESEARCH REFERENCES

**ALR.** Validity, Construction, and Application of State Statutory Requirements Concerning Placement of Independent Candidate for President of the United States on Ballot. 33 A.L.R.6th 513.

**U. Ark. Little Rock L. Rev.** Annual Survey of Caselaw, Election Law, 26 U. Ark. Little Rock L. Rev. 904.

## CASE NOTES

### ANALYSIS

Election Contest.  
Enforcement.  
Jurisdiction.  
Mandamus.  
Qualification of Candidates.

### Election Contest.

Issue presented in the claimant's petition asserting that the candidate was in-

eligible was moot, because the claimant failed to pursue his petition expeditiously in order to obtain the remedy of removing the candidate's name from the ballot before the election and the claimant had offered no compelling reason for his delay in filing the petition, and waiting until the day before the election to file the petition rendered it impossible for the trial court to fulfill the requirement under Ark. R. Civ. P. 78(d) that the trial court hold a

hearing no sooner than two and no longer than seven days thereafter. *Oliver v. Phillips*, 375 Ark. 287, 290 S.W.3d 11 (2008).

### **Enforcement.**

Where a Democratic candidate had challenged a Republican candidate's residency requirements, the trial court erred in dismissing the Democratic candidate's suit as the complaint was specifically authorized by subsection (b) of this section. *Tumey v. Daniels*, 359 Ark. 256, 196 S.W.3d 479 (2004).

### **Jurisdiction.**

Appellee candidate's petition for writ of mandamus and declaratory judgment, which sought to have appellant candidate declared ineligible, was dismissed because appellee filed the petition postelection rather than preelection, appellee cited to subsection (b) of this section, and a circuit court lacked jurisdiction to consider a pre-election challenge filed postelection. *Zollicoffer v. Post*, 371 Ark. 263, 265 S.W.3d 114 (2007), rehearing denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 641 (Nov. 15, 2007).

Trial court had jurisdiction over the election contest and jurisdiction was not subsequently erased by the election, because the action was filed pre-election. *Oliver v. Phillips*, 375 Ark. 287, 290 S.W.3d 11 (2008).

### **Mandamus.**

An action for mandamus and declaratory relief is the proper method of enforcing the right set out in this section. *State ex rel. Robinson v. Craighead County Bd. of Election Comm'rs*, 300 Ark. 405, 779 S.W.2d 169 (1989).

### **Qualification of Candidates.**

Arkansas law is well settled that the party chairman and secretary do not have the judicial authority to determine that a candidate is ineligible to hold public office, nor can they refuse to place the candi-

date's name upon the ballot. *Ivy v. Republican Party*, 318 Ark. 50, 883 S.W.2d 805 (1994).

The General Assembly has provided no procedure for state and county party committees or conventions to make a judicial determination concerning whether a party nominee should be certified; to do so means the party officials would investigate, make factual determinations and determine whether those factual findings constitute "other good and legal cause" under § 7-1-101(25), an undertaking which requires a judicial tribunal, not a political one. *Ivy v. Republican Party*, 318 Ark. 50, 883 S.W.2d 805 (1994).

Statutory right to challenge the eligibility of a candidate before the election is provided by this section; however, this statutory procedure only allows pre-election challenges to a candidate's eligibility. *Pederson v. Stracener*, 354 Ark. 716, 128 S.W.3d 818 (2003).

Candidate's post-election challenge to a state senate runoff election was properly brought within the circuit or district in which alleged voter fraud occurred; further, the Secretary of State and the state democratic committee were not indispensable parties for complete relief under Ark. R. Civ. P. 19 because the office of state senator was not a "state office" as that term had been differentiated in §§ 7-7-401 and 7-5-804, and Ark. Const. art. 5, §§ 3 and 4. *Willis v. Crumbly*, 368 Ark. 5, 242 S.W.3d 600 (2006).

Because a candidate did not comply with Ark. R. Civ. P. 78(d) and Ark. Sup. Ct. & Ct. App. R. 6-1(b) in contesting a declaration that the candidate was ineligible to hold office under subsection (b) of this section, the lapse of time and the fact that the election had already been held rendered moot the issues presented on appeal. *Fite v. Grulkey*, 2011 Ark. 188, — S.W.3d — (2011).

**Cited:** *Pederson v. Stracener*, 354 Ark. 716, 128 S.W.3d 818 (2003).

## **7-5-208. Ballots — Form.**

(a) All election ballots provided by the county board of election commissioners of any county in this state for any election shall be alike and shall be in plain type.

(b)(1) The heading of each ballot shall be:

"OFFICIAL BALLOT

\_\_\_\_\_(description)\_\_\_\_\_

## ELECTION

\_\_\_\_(date)\_\_\_\_, \_\_\_\_ (year)\_\_\_\_

Vote by placing an appropriate mark opposite the person for whom you wish to vote”.

(2) If the ballot contains an initiated or referred amendment, act, or measure, the heading shall also contain these words: “Vote on amendments, acts, and measures by placing an appropriate mark below the amendment (or act or measure) either FOR or AGAINST”.

(c)(1) Every ballot shall contain the name of each candidate who has been nominated or has qualified in accordance with law for each office. The names of the candidates shall be listed in a perpendicular column under the name of each office to be filled.

(2) In all elections in which votes for a write-in candidate may be counted, at the bottom of each list of names for each position or office appearing on the ballot, there shall be a blank line for a possible write-in vote for that position or office. However, the blank line shall not appear on the ballot with respect to those offices and candidates for positions in which no person has qualified as a write-in candidate by filing his or her notice of intention to be a write-in candidate within the time prescribed in § 7-5-205.

(d) Adjacent to the name of each candidate and on the same line there shall be a place for marking a vote for the candidate. Below each act, amendment, or measure to be voted on, there shall be the words “FOR” and “AGAINST” situated one above the other with a place for marking a vote for the act, amendment, or measure adjacent to each word and on the same line.

(e) Opposite the designation of each office, there shall appear these words: “VOTE FOR \_\_\_\_\_”. The number of persons required to fill the vacancy in office shall be placed in the blank space.

**History.** Acts 1969, No. 465, Art. 6, § 13; 1971, No. 224, § 1; 1971, No. 261, §§ 11, 20, 22; 1971, No. 355, §§ 1-3; 1979, No. 389, § 1; A.S.A. 1947, § 3-613; Acts 1987, No. 280, §§ 1, 2; 1993, No. 1011, § 1; 1995, No. 461, § 1; 1997, No. 451, § 13; 1999, No. 640, § 2; 2005, No. 1677, § 4; 2005, No. 2233, § 3; 2007, No. 705, § 1; 2007, No. 1049, § 16; 2009, No. 1480, § 20; 2011, No. 1020, § 1.

**Amendments.** The 2007 amendment by No. 705 deleted former (d) and redesignated the remaining subsections accordingly; substituted “below” for “above” in present (d)(2); rewrote the introductory

language in present (e); in present (f), rewrote (2)(A) and (3), and in (5), inserted “except for the nonpartisan judicial general election”; rewrote present (g) and (h); and made related and stylistic changes.

The 2007 amendment by No. 1049, in present (f)(4), substituted “sixty-five (65)” for “thirty-five (35),” and made a stylistic change.

The 2009 amendment deleted “Paper” at the beginning of the section heading; and rewrote the section.

The 2011 amendment substituted “below” for “above” (b)(2).



## RESEARCH REFERENCES

**ALR.** Validity, Construction, and Application of State Statutory Requirements Concerning Placement of Independent

Candidate for President of the United States on Ballot. 33 A.L.R.6th 513.

**7-5-209. Ballots — Correction of errors.**

Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names or description of candidates nominated for office or in the preparation of ballots, the county board of election commissioners shall in a public meeting announce the error or omission and immediately correct the error or omission or show cause why the correction should not be done.

**History.** Acts 1969, No. 465, Art. 6, § 12; A.S.A. 1947, § 3-612; Acts 1997, No. 451, § 14; 2009, No. 1480, § 21.

**Amendments.** The 2009 amendment substituted “preparation” for “printing.”

## CASE NOTES

## ANALYSIS

Failure to Seek Correction.  
Nature of Remedy.

**Failure to Seek Correction.**

Candidate who had paid his filing fee to the wrong treasurer and charged that he was denied a place on the ballot through racial discrimination should have sought relief under former law governing correction of errors in ballots before seeking injunctive relief in federal court. *Bynum v. Burns*, 379 F.2d 229 (8th Cir. 1967) (decision under prior law).

Judgment invalidating election because of defects in ballots would not be reversed

because of the failure of the contestors to comply with former similar law where the defendant election commissioners did not raise the question of the absence of an affidavit either by pleading or objection in the trial court. *Gregory v. Gordon*, 243 Ark. 635, 420 S.W.2d 825 (1967) (decision under prior law).

**Nature of Remedy.**

Preelection remedy to correct error on ballot is mandatory but may only be directive after the election and action to void election was properly denied. *McFarlin v. Kelly*, 246 Ark. 1237, 442 S.W.2d 183 (1969) (decision under prior law).

**Cited:** *Garner v. Holland*, 264 Ark. 536, 572 S.W.2d 589 (1978).

**7-5-210. [Repealed.]**

**Publisher's Notes.** This section, concerning ballots, was repealed by Acts 2009, No. 1480, § 22. This section was

derived from Acts 1969, No. 465, Art. 6, § 10; A.S.A. 1947, § 3-610; Acts 1995, No. 601, § 1; 2007, No. 1020, § 3.

**7-5-211. Delivery of election supplies.**

(a) At least one (1) day before any election:

(1)(A) The county board of election commissioners shall designate a suitable person or persons and deliver to the person or persons the ballots.

(B) The person shall not be an elected official, an elected official's deputy, or a candidate for office; and

(2) For each set of poll workers in each polling place, the county board of election commissioners shall deliver to the designated person or persons the following additional election supplies if applicable:

- (A) A good and sufficient ballot box with numbered seals;
- (B) Sufficient list-of-voters forms adequate to record the names of all registered voters who appear to vote in the polling place;
- (C) A precinct voter registration list;
- (D) Sufficient tally sheets;
- (E) Envelopes to seal the ballots and certificates;
- (F) Separate sheets containing blank forms of certificates prepared to enable the poll workers to properly certify the paper ballot count at the polling site, upon which certificates shall be endorsed a blank form of oath to be taken by the poll workers before entering upon the discharge of their duties;
- (G) Voter registration application forms for voters using fail-safe voting and other record-keeping supplies necessary to document fail-safe voting procedures; and
- (H) In those counties in which an optical scanner is used to count paper ballots, the marking instrument recommended by the manufacturer of the optical scanner for proper marking on the ballots shall be provided.

(b) The county board of election commissioners shall be responsible for the security of the delivered election materials.

(c) The county board of election commissioners shall be responsible for providing ballots and election materials for absentee and early voting to the county clerk before the beginning day for absentee and early voting.

**History.** Acts 1969, No. 465, Art. 6, § 11; 1973, No. 157, § 8; A.S.A. 1947, § 3-611; Acts 1995, No. 601, § 2; 1995, No. 946, § 3; 1995, No. 963, § 3; 1997, No. 451, § 15; 1999, No. 920, § 1; 2001, No. 1178, § 1; 2007, No. 1020, § 4; 2009, No. 959, § 7; 2009, No. 1480, § 23.

**Amendments.** The 2007 amendment substituted “an elected” for “the elected” in (a)(1)(B); substituted “polling place” for

“precinct” twice in (a)(2); and substituted “the paper ballot count at the polling site” for “the result of the election” in (a)(2)(F).

The 2009 amendment by No. 959 substituted “poll workers” for “election officials” in three places in (a)(2); and made a minor stylistic change in (c).

The 2009 amendment by No. 1480 deleted “as set forth in § 7-5-210” at the end of (a)(1)(A).

## CASE NOTES

### ANALYSIS

Ballot Boxes.  
Care of Ballots.  
Legislative Intent.

#### Ballot Boxes.

Sealed cardboard boxes which had no lock and key or numbered seal were not in substantial compliance with former law, but where they were identified by county

treasurer who guarded them in vault at the courthouse and in locked closet at his home, integrity of the ballot was not impeached and no rights of candidates were prejudiced. *Horne v. Fish*, 198 Ark. 79, 127 S.W.2d 623 (1939) (decision under prior law).

#### Care of Ballots.

County treasurer in charge of ballots under former law was not required to

place them where it would be impossible for someone, determined to do so, to break in and get to the ballots. *Horne v. Fish*, 198 Ark. 79, 127 S.W.2d 623 (1939) (decision under prior law).

#### **Legislative Intent.**

The language of subsection (b) does not demonstrate an intent on the part of the

General Assembly to criminalize the delivery of election supplies by a sheriff in a contested reelection. *State ex rel. Sargent v. Lewis*, 335 Ark. 188, 979 S.W.2d 894 (1998).

**Cited:** *Sargent v. Foster*, 332 Ark. 608, 966 S.W.2d 263 (1998).

### **7-5-212. [Repealed.]**

**Publisher's Notes.** This section, concerning permanent ink when ballots counted by hand, was repealed by Acts

2009, No. 1480, § 24. This section was derived from Acts 1999, No. 920, § 2.

## **SUBCHAPTER 3 — CONDUCT OF ELECTIONS**

#### **SECTION.**

- 7-5-301. Acquisition, use, and cost of voting systems.
- 7-5-302. [Repealed.]
- 7-5-303. [Repealed.]
- 7-5-304. Opening and closing polls — Time.
- 7-5-305. Requirements.
- 7-5-306. Procedure when voter's name is not on the precinct voter registration list.
- 7-5-307. [Repealed.]
- 7-5-308. Provisional ballot procedure.
- 7-5-309. Voting procedure.
- 7-5-310. Privacy — Assistance to disabled voters.
- 7-5-311. Voters with disabilities — Special procedures.

#### **SECTION.**

- 7-5-312. Challenge of voter's ballot by poll watchers, candidates, or designees.
- 7-5-313. [Repealed.]
- 7-5-314. Duties of election officials — Voter lists.
- 7-5-315. Counting votes for unopposed and deceased candidates.
- 7-5-316. Presence of candidate — Designation of representatives.
- 7-5-317. Processing and delivery of election materials.
- 7-5-318. Failure to deliver materials — Penalty — Messenger to obtain delinquent returns.
- 7-5-319. Recount.
- 7-5-320. [Repealed.]

**Effective Dates.** Acts 1969, No. 465, Art. 13, § 10: approved Apr. 17, 1969. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the present election laws are ancient and outdated in part and have caused and are causing much confusion and controversy, that there are particular problem areas in the present law which need immediate legislation in order to resolve same, that elections are and will continue to be held and conducted in this atmosphere of confusion and controversy until these problem areas are resolved and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and

this Act shall be in force and effect from and after its passage."

Acts 1973, No. 157, § 10: Feb. 20, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present laws of the state, that separate or common polling places cannot be established by county committees in counties using voting machines without attendant substantial costs; that it is essential to the proper and economical administration of the election laws of this state that legislation be enacted immediately to provide that respective county committees or county election commissions in counties using voting machines may designate separate and/or common polling places where all elections can be held and to provide for a minimum



number of election officials to serve at such polling places so that substantial economies can be realized in the conduct of such elections. Therefore, an emergency is hereby declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 104, § 3: Feb. 19, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law requires polls to be opened at eight (8) o'clock a.m. and that in many instances it would be of great benefit to the voters for the polls to open prior to eight (8) o'clock and that this act is immediately necessary to grant the voting officials the flexibility to open the polls prior to eight (8) o'clock if they deem necessary. Therefore an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Identical Acts 1995, Nos. 946 and 963, § 14: Jan. 1, 1996.

Acts 2005, No. 2233, § 48: Jan. 1, 2006.

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 1189, § 4: effective on and after Jan. 1, 2012.

## RESEARCH REFERENCES

**Am. Jur.** 26 Am. Jur. 2d, Elections, § 225 et seq.

**C.J.S.** 29 C.J.S., Elections, § 190 et seq.

### 7-5-301. Acquisition, use, and cost of voting systems.

(a) The casting and counting of votes in all elections shall be by:

(1) Voting machines selected by the Secretary of State;  
(2) Electronic vote tabulating devices in combination with voting machines accessible to voters with disabilities to be selected by the Secretary of State; or

(3) Paper ballots counted by hand in combination with voting machines accessible to voters with disabilities selected by the Secretary of State.

(b)(1) All direct recording electronic voting machines shall include a voter-verified paper audit trail, except that those direct recording electronic voting machines in use during the 2004 general election may include a voter-verified paper audit trail at the discretion of the county election commission.

(2) All direct recording electronic voting machines purchased on or after January 1, 2006, shall include a voter-verified paper audit trail.

(c)(1) The quorum court of each county shall choose by resolution a voting system containing voting machines or electronic vote tabulating

devices, or both, or voting machines in combination with paper ballots counted by hand for use in all elections in the county.

(2) Any voting machine or electronic vote tabulating devices chosen by the quorum court shall be those selected by the Secretary of State.

(3) Any voting system used in elections for federal office shall comply with the requirements of the federal Help America Vote Act of 2002.

(d)(1) Voting machines and electronic vote tabulating devices shall be purchased pursuant to a competitive bidding process with consideration given to:

(A) Price;

(B) Quality; and

(C) Adaptability to Arkansas ballot requirements.

(2)(A) The Secretary of State shall establish guidelines and procedures for a grant program to distribute funds from the County Voting System Grant Fund, § 19-5-1247, to counties for the purposes of purchasing:

(i) Voting machines;

(ii) Electronic vote tabulating devices;

(iii) Other voting system equipment, components, or programming; and

(iv) Maintenance of voting system equipment, components, and programming.

(B) A grant provided to a county from the County Voting System Grant Fund, § 19-5-1247, shall be paid into the county treasury to the credit of the fund to be known as the "voting system grant fund".

(C) Moneys deposited into the voting system grant fund shall be appropriated for the uses designated in this section by the quorum court.

(e) The Secretary of State or the county shall not purchase or procure any voting machine or electronic vote tabulating device unless the party selling the machine or device shall:

(1) Guarantee the machines in writing for a period of one (1) year; and

(2) Provide, if deemed necessary by the county, personnel for the supervision and training of county personnel for at least two (2) elections, one (1) primary and one (1) general.

(f) Each county shall provide polling places that are adequate for the operation of the voting system, including, but not limited to, access, if necessary, to a sufficient number of electrical outlets and telephone lines.

(g) Each county shall provide or contract for adequate technical support for the installation, set up, and operation of the voting system for each election.

(h) The Secretary of State shall be responsible for the development, implementation, and provision of a continuing program to educate voters and election officials in the proper use of the voting system.

(i) Electronic vote tabulating devices and voting machines, authorized as provided under this subchapter, may be acquired and used in

any election upon the adoption of an ordinance by the quorum court of the county.

(j) The costs of using electronic vote tabulating devices and voting machines at all general and special elections, including, but not limited to, costs of supplies, technical assistance, and transportation of the systems to and from the polling places, shall be paid in accordance with § 7-5-104.

(k) The county board of election commissioners shall have complete control and supervision of voting machines and electronic vote tabulating devices at all elections.

(l) The county clerk shall have supervision of voting machines and electronic vote tabulating devices used for early voting in the clerk's designated early voting location.

(m)(1) The county board of election commissioners shall have the care and custody of all voting machines and all electronic vote tabulating devices while not in use.

(2) The county board of election commissioners shall be responsible for the proper preparation, use, maintenance, and care of the voting machines and the electronic vote tabulating devices during the period of time required for that election.

**History.** Acts 1969, No. 465, Art. 7, § 2; 1971, No. 261, § 10; A.S.A. 1947, § 3-702; Acts 1995, No. 946, § 4; 1995, No. 963, § 4; 1997, No. 451, § 16; 2005, No. 2233, § 4; 2007, No. 1020, § 5; 2009, No. 959, §§ 8, 9; 2011, No. 1189, § 2.

**Amendments.** The 2007 amendment deleted "board of election commissioners" following "county" in (e).

The 2009 amendment deleted "in use on or after January 1, 2006" following the

first instance of "voting machines" in (b)(1); deleted (h)(2); and made related and minor stylistic changes.

The 2011 amendment rewrote (d)(2)(A); inserted (d)(2)(B) and (d)(2)(C); and deleted (d)(3).

**Effective Dates.** Acts 2011, No. 1189, § 4: effective on and after Jan. 1, 2012.

## 7-5-302. [Repealed.]

**Publisher's Notes.** This section, concerning inspection of supplies and posting of documents was repealed by Acts 2007, No. 222, § 8. The section was derived

from Acts 1969, No. 465, Art. 7, § 6; A.S.A. 1947, § 3-706; Acts 1995, No. 946, § 5; 1995, No. 963, § 5; 2005, No. 2233, § 5.

## 7-5-303. [Repealed.]

**Publisher's Notes.** This section, concerning inspection of ballots by judges, was repealed by Acts 1997, No. 451, § 17.

The section was derived from Acts 1969, No. 465, Art. 7, § 5; A.S.A. 1947, § 3-705.

## 7-5-304. Opening and closing polls — Time.

(a) The polls shall be opened at 7:30 a.m., and they shall remain open continuously until 7:30 p.m.



(b) In all counties, when the polls close, all persons who have presented themselves for voting and who are then in line at the polling site shall be permitted to cast their votes.

(c)(1) A person who votes in an election as a result of a federal or state court order or any other order extending the time established for closing the polls may vote in that election only by casting a provisional ballot.

(2) The ballot shall be separated and held apart from other provisional ballots cast by those not affected by the order.

**History.** Acts 1969, No. 465, Art. 7, § 1; 1981, No. 104, § 1; A.S.A. 1947, § 3-701; Acts 1993, No. 515, § 1; 2007, No. 1020, § 6; 2009, No. 959, § 10.

**Amendments.** The 2007 amendment added (b).

The 2009 amendment added (c), and made a minor punctuation change.

## CASE NOTES

### ANALYSIS

Early Closing.

Extension of Voting Hours.

#### Early Closing.

Where there was no showing that early closing resulted in denial of privilege to vote, the failure to strictly comply with former similar section had no effect on the validity of the election. *Rogers v. Mason*, 246 Ark. 1, 436 S.W.2d 827 (1969) (decision under prior law).

### Extension of Voting Hours.

This section was clear that polls opened at 7:30 a.m. on the day of the election and closed at 7:30 p.m. and there was no provision in the Arkansas Election Code authorizing an extension of voting times by the judiciary; thus, the circuit court judge's order extending voting hours was void. *Tompkins v. Tompkins*, 341 Ark. 949, 20 S.W.3d 385 (2000).

## 7-5-305. Requirements.

(a) Before a person is permitted to vote, the poll worker shall:

(1) Request the voter to identify himself or herself in order to verify the existence of his or her name on the precinct voter registration list;

(2) Request the voter, in the presence of the poll worker, to state his or her address and state his or her date of birth;

(3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list;

(4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the poll worker deems appropriate;

(5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct.

(B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files.

(C) If the address is not within the precinct:

(i) Verify with the county clerk's office the proper precinct; and

- (ii) Instruct the voter to go to the polling site serving that precinct in order for his or her vote to be counted;
- (6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files;
- (7) Request the voter, in the presence of the poll worker, to sign his or her name, including the given name, middle name or initial, if any, and last name in the space provided on the precinct voter registration list. If a person is unable to sign his or her signature or make his or her mark or cross, the poll worker shall enter his or her initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list;
- (8)(A) Request the voter for purposes of identification to provide a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.
- (B)(i) If a voter is unable to provide this identification, the poll worker shall indicate on the precinct voter registration list that the voter did not provide identification.
- (ii) A first-time voter who registers by mail without providing identification when registering and desires to vote in person but who does not meet the identification requirements of subdivision (a)(8)(A) of this section may cast a provisional ballot.
- (iii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney.
- (iv) The prosecuting attorney may investigate possible voter fraud;
- (9) Record the voter's name or request the voter to print his or her name on the list-of-voters form;
- (10) Follow the procedures under §§ 7-5-310 and 7-5-311 if the person is a voter with a disability and presents himself or herself to vote; and
- (11) Permit the person to cast a provisional ballot if the person received an absentee ballot according to the precinct voter registration list.
- (b) A person not listed on the precinct voter registration list may vote only in accordance with § 7-5-306.

**History.** Acts 1969, No. 465, Art. 7, § 8; A.S.A. 1947, § 3-708; Acts 1993, No. 487, § 2; 1995, No. 946, § 6; 1995, No. 963, § 6; 1997, No. 451, § 18; 1999, No. 1454, § 1; 2001, No. 471, § 1; 2003, No. 994, § 4; 2003, No. 1308, § 4; 2005, No. 238, § 1; 2005, No. 2193, § 2; 2007, No. 1020, § 8; 2009, No. 959, § 11.

**Amendments.** The 2007 amendment deleted "instruct the voter to" following

"precinct" in (a)(5)(C); substituted "Instruct the voter to go" for "Go" in (a)(5)(C)(ii); and inserted present (a)(9) and redesignated the remaining subsections accordingly.

The 2009 amendment substituted "poll worker" for "election official" throughout the section; deleted "or confirm" following "state" in (a)(2); and substituted "§§ 7-5-310 and 7-5-311" for "§§ 7-5-310, 7-5-311,

and 7-5-523 [Repealed]" in (a)(10); and application forms, Ark. Const. Amend. 51, § 6.  
made minor stylistic changes.

**Cross References.** Voter registration

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of sembly, Election Law, Help America Vote Legislation, 2003 Arkansas General As- Act, 26 U. Ark. Little Rock L. Rev. 398.

#### **7-5-306. Procedure when voter's name is not on the precinct voter registration list.**

(a) If the voter's name is not on the precinct voter registration list, the poll worker shall permit the voter to vote only under the following conditions:

(1) The voter identifies himself or herself by stating his or her name and date of birth and is verified by the county clerk as a registered voter within the county and, if the county is divided into more than one (1) congressional district, within the same congressional district;

(2) The voter gives and affirms his or her current residence and the poll worker verifies with the county clerk that the voter's residence is within the precinct;

(3) The voter completes an updated voter registration application form; and

(4) The voter signs the precinct voter registration list.

(b) If the voter is not listed on the precinct voter registration list and the poll worker is unable to verify the voter's registration with the county clerk and the voter contends that he or she is a registered voter in the precinct in which he or she desires to vote and that he or she is eligible to vote, then the voter shall be permitted to cast a provisional ballot.

**History.** Acts 1969, No. 465, Art. 7, § 9; A.S.A. 1947, § 3-709; Acts 1995, No. 946, § 7; 1995, No. 963, § 7; 1997, No. 451, § 19; 2003, No. 994, § 5; 2005, No. 238, § 2; 2007, No. 224, § 2; 2009, No. 959, § 12.  
deleted "as follows" at the end of the introductory paragraph of (b); and deleted former (b)(1) through (b)(4) and (c).

The 2009 amendment substituted "poll worker" for "election official" in three places.

**Amendments.** The 2007 amendment

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of sembly, Election Law, Help America Vote Legislation, 2003 Arkansas General As- Act, 26 U. Ark. Little Rock L. Rev. 398.

#### **7-5-307. [Repealed.]**

**Publisher's Notes.** This section, concerning election official's initials was repealed by Acts 2007, No. 224, § 3. The section was derived from Acts 1969, No. 465, Art. 7, § 10; A.S.A. 1947, § 3-710; Acts 1995, No. 461, § 2; 1997, No. 451, § 20; 2005, No. 880, § 1.



**7-5-308. Provisional ballot procedure.**

(a) When the voter is required by law to cast a provisional ballot, the ballot shall be cast pursuant to the following procedures:

(1) A poll worker shall notify the individual that the individual may cast a provisional ballot in that election;

(2) The voter shall execute a written eligibility affirmation in the presence of the poll worker stating that he or she is a registered voter in the precinct in which he or she desires to vote and is eligible to vote;

(3) The poll worker shall initial the back of the ballot, remove the ballot stub from the provisional ballot, and place the stub in the stub box provided;

(4) The voter shall mark his or her provisional ballot;

(5) The voter shall place the voted provisional ballot in a ballot secrecy envelope marked "provisional ballot" and seal the envelope;

(6) The voter shall place the sealed provisional ballot envelope containing the voted provisional ballot in a voter envelope, seal the envelope, and give it to the poll worker;

(7) The poll worker shall provide the voter written information instructing him or her on how to determine whether his or her provisional ballot was counted, and if not, the reason the ballot was not counted; and

(8) The poll worker shall make a separate list of the names and addresses of all persons voting a provisional ballot.

(b) The poll worker shall preserve, secure, and separate all provisional ballots from the remaining ballots so that the right of any person to vote may be determined later by the county board of election commissioners or the court in which an election contest may be filed.

(c)(1) Whenever a person casts a provisional ballot, the poll worker shall provide the voter written information that states that the individual who casts a provisional ballot will be able to ascertain whether the vote was counted, and if not, the reason the vote was not counted.

(2) The Secretary of State shall establish a free access system to allow a provisional voter to ascertain whether his or her vote was counted, and if not, the reason his or her vote was not counted.

(3) Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

(d)(1) Before certification of the results of the election, the county board shall determine whether the provisional ballots are valid.

(2) Unless enjoined by a court of competent jurisdiction, a provisional ballot shall be counted if it is cast by a registered voter and is the correct ballot, according to the precinct listed on the voter's eligibility affirmation, for the precinct of the voter's residence.

(e) If, upon examination of any provisional ballots, the county board suspects that a violation of the election laws has occurred, the county board may refer the matter to the prosecuting attorney.

**History.** Acts 1969, No. 465, Art. 7, § 12; A.S.A. 1947, § 3-712; Acts 2007, No. 224, § 4; 2009, No. 1480, § 25.

**Amendments.** The 2007 amendment substituted "Provisional ballot procedure" for "Ballots to remain in polling place" in the section heading, and rewrote the section.

The 2009 amendment substituted "poll worker" for "election official" and variants throughout; rewrote (c); deleted former (d) and redesignated the remaining subsections accordingly; and rewrote (d).

### **7-5-309. Voting procedure.**

(a)(1) At general, primary, special, and school elections in counties that use paper ballots, the county board of election commissioners shall provide voting booths for each polling site in a number deemed appropriate by the county board of election commissioners.

(2) Each voting booth shall be situated so as to permit a voter to prepare his or her ballot screened from observation and shall be furnished with any supplies and conveniences as will enable the voter to prepare his or her ballot.

(3) The voting booths shall be situated in the polling site in plain view of the poll workers.

(4) A person other than the poll workers and those admitted for the purpose of voting shall not be permitted within the immediate voting area, which shall be considered as within six feet (6') of the voting booths, except by authority of the election judge and then only when necessary to keep order and enforce the law.

(b) Before giving the voter a ballot, a poll worker shall:

- (1) Initial the back of the ballot;
- (2) Remove the ballot stub; and
- (3) Place the stub into the stub box provided.

(c)(1)(A) Upon receiving his or her ballot, the voter shall proceed to mark it by placing an appropriate mark.

(B) A voter shall not be allowed more than five (5) minutes to mark his or her ballot.

(2) The voter shall then personally deposit the ballot into the ballot box provided.

(d)(1) The voter shall not be required to sign, initial, or in any way identify himself or herself with the ballot, the ballot stub, or the list of voters other than in the manner set forth in this section.

(2) However, a poll worker may inspect the back of the ballot before the voter deposits it to see if it has been initialed by an election official.

(e) After having voted or having declined to do so, the voter shall immediately depart from the polling site.

(f) A person shall not be permitted to carry a ballot outside of the polling place.

(g)(1) If a paper ballot is left at a voting booth or anywhere else in the polling site without being inserted into the ballot box by the voter before departing the polling site, a poll worker shall:

- (A) Write "Abandoned" on the face of the paper ballot;
- (B) Place the paper ballot into an envelope marked "Abandoned Ballot";

(C) Note in writing on the outside of the envelope all circumstances surrounding the abandoned ballot; and

(D) Preserve the abandoned ballot separately.

(2) The county board of election commissioners shall not count the ballot.

(h)(1) If a paper ballot that is fed by a voter into an electronic vote tabulating device at the polling site is rejected by the device but is still in the receiving part of the counter and the voter has not reported to a poll worker his or her desire to cancel or replace the ballot before departing the polling site, two (2) poll workers shall take action to override warnings on the device and complete the process of casting the ballot.

(2) The poll workers shall document:

(A) The time;

(B) The name of the voter;

(C) The names of the poll workers completing the process of casting the ballot; and

(D) All other circumstances surrounding the abandoned ballot.

**History.** Acts 1969, No. 465, Art. 7, § 11; A.S.A. 1947, § 3-711; Acts 1997, No. 451, § 21; 2005, No. 880, § 2; 2007, No. 224, § 5; 2007, No. 834, § 1; 2009, No. 959, § 13; 2011, No. 1033, § 1.

**Amendments.** The 2007 amendment by No. 224 inserted “or her” in (a)(2) and (c)(1)(A); added present (b) and (f) and redesignated the remaining subsections accordingly; and inserted “or herself” in present (d)(1).

The 2007 amendment by No. 834 inserted “or her” in (a)(2), present (b)(1)(A), and present (b)(1)(B); inserted “or herself” in present (c)(1); and added present (g) and (h).

The 2009 amendment substituted “poll worker” for “election official,” “election officer,” or variant throughout the section; substituted “judge” for “officials” in (a)(4); and made minor stylistic changes.

The 2011 amendment substituted “voting booths for each polling site in a number deemed appropriate by the county board of election commissioners” for “in each polling site at least one (1) voting booth for each fifty (50) registered electors voting in the last preceding comparable election” in (a)(1).

## CASE NOTES

### ANALYSIS

Ballot Stubs.

Immediate Voting Area.

Secrecy.

Voting Booth.

Voting Squares.

Wording on Ballot.

Write-In Votes.

### Ballot Stubs.

Election officials were correct in counting three ballots found the morning after the election, where plaintiff’s complaint alleged no fraud, and did not challenge the qualifications of any voter casting ballots,

and the voters whose ballots were belatedly counted were presumably registered, eligible voters whose only mistake was their failure to separate ballot stubs from their ballots and to place the stubs in the ballot stub box. *Ashcraft v. Cox*, 310 Ark. 703, 839 S.W.2d 219 (1992).

### Immediate Voting Area.

Trial court did not err in ruling that a county election commission did not have to force voters to use voting booths because subdivision (a)(4) of this section defined the immediate voting area and stated who could lawfully enter that area, but it did not state that a voter could not mark a ballot outside of the immediate



voting area. *Hamaker v. Pulaski County Election Comm'n*, 2011 Ark. 390, — S.W.3d — (2011).

### **Secrecy.**

Voter may waive his or her right to vote in secrecy because no one may force a voter to cast an open ballot, and a voter may not be restrained from exercising his or her privilege of voting in secrecy; but if a voter desires to vote outside the confines of a voting booth, he or she may do so, and a voter is not required to avail himself or herself of the methods in place to ensure privacy. *Hamaker v. Pulaski County Election Comm'n*, 2011 Ark. 390, — S.W.3d — (2011).

### **Voting Booth.**

In accordance with subdivision (a)(2) of this section, a county election commission must situate the voting booths so as to permit a voter to prepare his or her ballot screened from observation, and thus, pursuant to subdivision (a)(2), the commission must provide the opportunity for a voter to prepare his or her ballot in a voting booth; subdivision (a)(2) does not, however, require the commission to force a voter to prepare his or her ballot in a voting booth. *Hamaker v. Pulaski County Election Comm'n*, 2011 Ark. 390, — S.W.3d — (2011).

### **Voting Squares.**

An election to approve a library tax was invalid where 95% of the ballots furnished voters had no voting square for "against." *Gregory v. Gordon*, 243 Ark. 635, 420 S.W.2d 825 (1967) (decision under prior law).

### **Wording on Ballot.**

Ballot titles and ballot forms should be so worded that a voter need not hesitate, before casting his vote, to ponder over its consequences so he can feel assured that he is casting it according to his actual desire. *Riviere v. Wells*, 270 Ark. 206, 604 S.W.2d 560 (1980).

### **Write-In Votes.**

Since an elector in a school election could write in the name of any person for whom he might wish to vote, he could alternatively, in the absence of fraud, paste a sticker bearing the name of a candidate on the ballot. *Bennett v. Miller*, 186 Ark. 413, 53 S.W.2d 853 (1932) (decision under prior law).

Write-in votes using printed stickers already marked with an X-mark was not improper as attempting to cast a write-in vote without the use of an X. *Pace v. Hickey*, 236 Ark. 792, 370 S.W.2d 66 (1963) (decision under prior law).

## **7-5-310. Privacy — Assistance to disabled voters.**

(a) Each voter shall be provided the privacy to mark his or her ballot. Privacy shall be provided by the poll workers at each polling site or by the county clerk, if the county clerk conducts early voting, to ensure that a voter desiring privacy is not singled out.

(b)(1) A voter shall inform the poll workers at the time that the voter presents himself or herself to vote that he or she is unable to mark or cast the ballot without help and needs assistance in casting his or her ballot.

(2) The voter shall be directed to a voting machine equipped for use by persons with disabilities by which he or she may elect to cast his or her ballot without assistance, or the voter may request assistance with either the paper ballot or the voting machine, depending on the voting system in use for the election, by:

(A) Two (2) poll workers; or

(B) A person named by the voter.

(3) If the voter is assisted by two (2) poll workers, one (1) of the poll workers shall observe the voting process and one (1) may assist the voter in marking and casting the ballot according to the wishes of the voter without comment or interpretation.

(4)(A) If the voter is assisted by one (1) person named by the voter, he or she may assist the voter in marking and casting the ballot according to the wishes of the voter without any comment or interpretation.

(B) No person other than the following shall assist more than six (6) voters in marking and casting a ballot at an election:

- (i) A poll worker;
- (ii) The county clerk during early voting; or
- (iii) A deputy county clerk during early voting.

(5) It shall be the duty of the poll workers at the polling site to make and maintain a list of the names and addresses of all persons assisting voters.

(c) Any voter who because of physical, sensory, or other disability who presents himself or herself for voting and who then informs a poll worker at the polling site that he or she is unable to stand in line for extended periods of time shall be entitled to and assisted by a poll worker to advance to the head of any line of voters then waiting in line to vote at the polling site.

**History.** Acts 1995, No. 908, § 1; 1995, No. 1296, § 39; 1997, No. 451, § 22; 2003, No. 1308, § 1; 2005, No. 2233, § 6; 2007, No. 1020, § 7; 2009, No. 658, § 3; 2009, No. 959, § 14.

**A.C.R.C. Notes.** As amended by Acts 1993, No. 1192, § 1, § 7-5-310 also provided, in part, that the section shall become null and void on January 1, 1995, and thus the section expired on that date. That version of § 7-5-310 was derived from Acts 1969, No. 465, Art. 7, § 13; 1985, No. 1025, § 1; A.S.A. 1947, § 3-713, Acts 1987, No. 702, § 1; 1993, No. 513, § 1; 1993, No. 1192, § 1.

Acts 1995, No. 908, § 1, which became effective July 28, 1995, purported to amend § 7-5-310, which was expired, and set out the section in a form identical to the section as it existed when it expired. Acts 1995, No. 1296, § 39, repealed § 7-

5-310 because it had expired, but pursuant to the provisions of Acts 1995, No. 1296, § 100, the amendment of § 7-5-310 by Acts 1995, No. 908, was deemed to supersede its repeal by Acts 1995, No. 1296, § 39.

**Amendments.** The 2007 amendment inserted “or county clerk” in (a); rewrote (b)(1); added “depending on the voting system in use for the election” in the introductory language of (b)(2); substituted “poll workers” for “election officials” in (b)(2)(A), (b)(3) and (b)(5); inserted “and casting” in (b)(3) and (b)(4); inserted “and addresses” in (b)(5); and substituted “a poll worker” for “an election official” twice in (c).

The 2009 amendment by No. 658 inserted (b)(4)(B).

The 2009 amendment by No. 959 rewrote (a).

## CASE NOTES

### ANALYSIS

Extent of Assistance.

Preparation by One Judge.

### Extent of Assistance.

This section permits assistance to be given to a voter who cannot operate a voting machine and allows assistance to

be given to a voter who wishes to vote for a write-in candidate but is unable to do so without assistance. *Smith v. Arkansas*, 385 F. Supp. 703 (E.D. Ark. 1974).

### Preparation by One Judge.

The voter is allowed to contradict his ballot in an election contest where it is shown that his ballot was prepared for

him by one instead of two judges. *Freeman v. Lazarus*, 61 Ark. 247, 32 S.W. 680 (1895) (decision under prior law).

### **7-5-311. Voters with disabilities — Special procedures.**

(a) The county boards of election commissioners shall provide voting locations that are accessible to voters with disabilities and shall provide reasonable and adequate methods whereby voters with disabilities may personally and secretly execute their ballots at the polling places.

(b) After conferring with and obtaining the assistance of persons with disabilities or organizations of citizens with disabilities, the State Board of Election Commissioners shall offer to assist local election authorities with the implementation of Title II requirements of the Americans with Disabilities Act and with the Title III requirements of the Help America Vote Act of 2002 regarding accessibility for voters with disabilities.

(c) As used in this section, the term “disability” means any physical, mental, or sensory impairment.

(d)(1) The county board shall be responsible for compliance with this section and with Pub. L. No. 98-435, Title II of Pub. L. No. 101-336, the Americans with Disabilities Act, and the Help America Vote Act regarding the accessibility of voting locations for voters with disabilities.

(2) The state board shall mail to the chair of each county board and the chair of each county political party a copy of this section and of Pub. L. No. 98-435.

**History.** Acts 1979, No. 972, § 1; A.S.A. 1947, § 3-721; Acts 1989, No. 912, § 2; 1993, No. 1192, § 3; 1995, No. 1120, § 1; 1999, No. 643, §§ 1, 2; 2003, No. 1308, § 2; 2005, No. 1827, § 4; 2007, No. 1020, § 9.

**Amendments.** The 2007 amendment deleted “with respect to general, special, and primary elections under their several jurisdictions” following “commissioners” in (a); substituted “mail to” for “provide” in (d)(2); and deleted former (d)(2)(B).

**U.S. Code.** Public Law 98-435, referred to in this section, is codified as 42 U.S.C. § 1973 *et seq.*

Title II of Public Law 101-336, referred to in this section, is codified as 42 U.S.C. § 12131 *et seq.* The Americans with Disabilities Act is codified primarily as 42 U.S.C. § 12101 *et seq.*

The federal Help America Vote Act of 2002, referred to in (b) and (d)(1), is codified as 42 U.S.C. § 15301 *nt.*

### **7-5-312. Challenge of voter’s ballot by poll watchers, candidates, or designees.**

(a) Poll watchers shall include any:

(1) Candidate in person, but only during the counting and tabulation of ballots and the processing of absentee ballots;

(2) Authorized representative of a candidate;

(3) Authorized representative of a group seeking the passage or defeat of a measure on the ballot; and

(4) Authorized representative of a political party with a candidate on the ballot.



(b) Each candidate, group, or party may have at any given time during the election, including early voting:

(1) One (1) authorized representative present at any one (1) time at each location within a polling site where voters identify themselves to election officials, so as to observe and ascertain the identity of those persons presenting themselves to vote for the purpose of challenging voters; and

(2) One (1) authorized representative present at any one (1) time at each location within the absentee ballot processing site where absentee ballots are processed, so as to observe and ascertain the identity of absentee voters for the purpose of challenging any absentee vote.

(c) In accordance with §§ 7-5-316, 7-5-413, 7-5-416, 7-5-527, and 7-5-615, a candidate in person or an authorized representative of a candidate or political party may be present at a polling site, central counting location, and absentee ballot counting location for the purpose of witnessing the counting of ballots by election officials and determining whether ballots are fairly and accurately counted.

(d) The document designating and authorizing a representative of a candidate, a representative of a group seeking the passage or defeat of a measure on the ballot, and a representative of a political party with a candidate on the ballot shall be filed with the county clerk and a file-marked copy shall be presented by the poll watcher to the election official immediately upon entering the polling site, absentee ballot processing site, or counting location in the following form:

“POLL WATCHER AUTHORIZATION FORM

Representative of a Candidate

I, ....., state that I am a candidate for the office of .....in the .....election. I further state that I have designated .....as my authorized representative at the election at polling sites .....and absentee ballot processing sites .....in .....County, Arkansas, to observe and ascertain the identity of persons presenting themselves to vote in person or by absentee for the purpose of challenging any voter in accordance with Arkansas Code §§ 7-5-312, 7-5-416, and 7-5-417. I further state that I have designated and authorized my representative named above to be present at the ballot counting locations at .....in .....County, Arkansas, for the purpose of witnessing the counting of ballots by election officials and determining whether ballots are fairly and accurately counted in accordance with Arkansas Code §§ 7-5-312, 7-5-316, 7-5-413, 7-5-416, 7-5-527, and 7-5-615.

Representative of a Group

I, ....., state that I represent the .....group that is seeking passage/defeat (circle one) of the ballot measure entitled .....on the ballot in the .....election at polling sites

.....and absentee ballot processing sites .....in  
 .....County, Arkansas, to observe and ascertain  
 the identity of persons presenting themselves to vote in person or by  
 absentee for the purpose of challenging any voter in accordance with  
 Arkansas Code §§ 7-5-312, 7-5-416, and 7-5-417.

Representative of a Party

I, ....., state that I am the chair or secretary of the  
 state/county (circle one) committee for the  
 .....party with candidates on the ballot in the  
 .....election. I further state that I have designated  
 .....as an authorized party representative at the  
 election at polling sites .....and absentee ballot  
 processing sites .....in  
 .....County, Arkansas, to observe and ascertain  
 the identity of persons presenting themselves to vote in person or by  
 absentee for the purpose of challenging any voter in accordance with  
 Arkansas Code §§ 7-5-312, 7-5-416, and 7-5-417. I further state that I  
 have designated and authorized my representative named above to be  
 present at the ballot counting locations at .....in  
 .....County, Arkansas, for the purpose of witness-  
 ing the counting of ballots by election officials and determining whether  
 ballots are fairly and accurately counted in accordance with Arkansas  
 Code §§ 7-5-312, 7-5-316, 7-5-413, 7-5-416, 7-5-527, and 7-5-615.

Signature of Candidate, Group Representative, or Chair/Secretary of  
 the State/County Committee

Acknowledged before me this .....day of ....., 20 ....

Notary Public: .....My Commission Expires:  
 .....

I do hereby state that I am familiar with the rights and responsibilities  
 of a poll watcher as outlined on the back of the poll watcher authori-  
 zation form and will in good faith comply with the provisions of same.

Signature of the Poll Watcher

Acknowledged before me this .....day of ....., 20 ....

Notary Public: .....My Commission Expires:  
 .....

I do hereby acknowledge the filing of this poll watcher authorization  
 form with the county clerk's office.

Signature of County Clerk"

(e) Poll watcher rights and responsibilities shall be printed on the  
 back of the document in the following form:

#### "POLL WATCHER RIGHTS AND RESPONSIBILITIES

A poll watcher may be:

- (1) A candidate in person, but only during the counting and tabula-  
 tion of ballots and the processing of absentee ballots;
- (2) An authorized representative of a candidate;

(3) An authorized representative of a group seeking the passage or defeat of a measure on the ballot; or

(4) An authorized representative of a party with a candidate on the ballot.

Official recognition of poll watchers:

(1) Only one (1) authorized poll watcher per candidate, group, or party at any one (1) given time may be officially recognized as a poll watcher at each location within a polling site where voters identify themselves to election officials;

(2) Only one (1) authorized poll watcher per candidate, group, or party at any one (1) given time may be officially recognized as a poll watcher at each location within the absentee ballot processing site where absentee ballots are processed; and

(3) Only one (1) authorized poll watcher per candidate or party at any one (1) given time may be officially recognized as a poll watcher at the counting of the ballots.

Poll watcher credentials:

(1) Except for candidates in person, poll watchers must present a valid affidavit in the form of a "Poll Watcher Authorization Form" to an election official immediately upon entering the polling or counting location; and

(2) Candidates in person attending a counting site or absentee ballot processing site are not required to present a "Poll Watcher Authorization Form" but must present some form of identification to an election official immediately upon entering the site for the purpose of confirming the poll watcher as a candidate on the ballot.

Poll watchers may:

(1) Observe the election officials;

(2) Stand close enough to the place where voters check in to vote so as to hear the voter's name;

(3) Compile lists of persons voting;

(4) Challenge ballots upon notification to an election official before the voter signs the precinct voter registration list and upon completing a "Challenged Ballot Form";

(5) Call to the attention of the election sheriff any occurrence believed to be an irregularity or violation of election law. The poll watcher may not discuss the occurrence unless the election sheriff invites the discussion; and

(6) Be present at the opening, processing, and canvassing of absentee ballots for the purpose of challenging absentee votes in the manner provided by law for personal voting challenges.

Poll watchers representing a candidate or political party may:

(1) Remain at the polling site after the poll closes if ballots are counted at the poll;

(2) Be present at the counting of votes by hand or by an electronic vote tabulating device at a central location;

(3) Be present at the counting of absentee ballots for the purpose of witnessing the counting of ballots by election officials and determining whether ballots are fairly and accurately counted; and



(4) Upon request made to an election official, inspect any or all ballots at the time the ballots are being counted.

Poll watchers may not:

(1) Be within six feet (6') of any voting machine or booth used by voters to cast their ballot;

(2) Speak to any voter or in any way attempt to influence a voter inside the polling site or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the polling site; or

(3) Disrupt the orderly conduct of the election."

(f) Poll watcher rights and responsibilities shall be posted in plain view at each polling site, absentee ballot processing site, and counting site.

(g) A poll watcher may challenge a voter only on the grounds that the voter is not eligible to vote in the precinct or that the voter has previously voted at that election.

(h)(1) When the ballot of any voter is thus challenged, it shall be treated as a provisional ballot.

(2) The poll watcher shall notify an election official of the challenge before the voter signs the precinct voter registration list.

(3) The poll watcher shall complete a challenged ballot form.

(4) The election official shall inform the voter that his or her ballot is being challenged.

(5) The procedures for casting a provisional ballot under § 7-5-308 shall be followed.

**History.** Acts 1969, No. 465, Art. 7, § 14; 1977, No. 114, § 1; A.S.A. 1947, § 3-714; Acts 1987, No. 247, § 2; 1987, No. 905, § 1; 1991, No. 407, § 1; 1991, No. 529, § 1; 1997, No. 451, § 23; 2003, No. 994, § 6; 2003, No. 1154, § 1; 2005, No. 67, § 8; 2005, No. 880, § 3; 2007, No. 224, § 6; 2009, No. 1480, § 26.

**Amendments.** The 2007 amendment rewrote the section.

The 2009 amendment rewrote (a)(1); substituted "voters" for "any voter who

appears for the purpose of casting a ballot" in (b)(1); in the "POLL WATCHER RIGHTS AND RESPONSIBILITIES" form in (e), rewrote (1) following "A poll wathcher may be," rewrote (2) following "Poll watcher credentials" and "Poll watchers may," deleted (2) following "Poll watchers may not" and redesignated (3) and (4) as (2) and (3); inserted present (g) and redesignated (g) as (h).

## RESEARCH REFERENCES

**ALR.** Validity of Statute Requiring Proof and Disclosure of Information as Condition of Registration to Vote. 48 A.L.R.6th 181.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Election Law, Help America Vote Act, 26 U. Ark. Little Rock L. Rev. 398.

## CASE NOTES

**Cited:** *Ashcraft v. Cox*, 310 Ark. 703, 839 S.W.2d 219 (1992).

### 7-5-313. [Repealed.]

**Publisher's Notes.** This section, concerning cancellation and return of spoiled ballots, was repealed by Acts 2009, No.

1480, § 27. This section was derived from Acts 1969, No. 465, Art. 7, § 12; A.S.A. 1947, § 3-712; Acts 1997, No. 451, § 24.

### 7-5-314. Duties of election officials — Voter lists.

The election officials shall total the number of voters on the list of voters form, and the lists shall be certified and attested to by the election officials.

**History.** Acts 1969, No. 465, Art. 7, § 16; 1971, No. 261, § 13; 1973, No. 157, § 7; A.S.A. 1947, § 3-716; Acts 1987, No. 247, § 3; 1993, No. 512, § 2; 1995, No. 946, § 8; 1995, No. 963, § 8; 1997, No. 451, § 25; 2007, No. 1020, § 10.

**Amendments.** The 2007 amendment

deleted “Voters in line at closing time” from the end of the section heading; deleted former (a) through (c); deleted the subsection (d) designation; and substituted “shall total the number of voters on the list of voters form” for “shall total the number of voters on the voter lists.”

### 7-5-315. Counting votes for unopposed and deceased candidates.

(a) The votes received by an unopposed candidate in any election held in this state shall not be counted or tabulated by the election officials. The word “UNOPPOSED” shall be sufficient to insert on the tally sheet to indicate that the candidate has received a majority of the votes cast in the election. However, the votes received by an unopposed candidate for the office of mayor or circuit clerk shall be counted and tabulated by the election officials.

(b)(1) The votes received by any person whose name appeared on the ballot and who withdrew or died after the certification of the ballot shall be counted.

(2)(A) If the person received enough votes to win the election, a vacancy in election shall be declared.

(B)(i) If the person received enough votes to qualify for a runoff, the person's name shall appear on the runoff ballot.

(ii) If enough votes are cast for the person to win the runoff, then a vacancy in election shall exist.

**History.** Acts 1969, No. 465, Art. 7, § 17; A.S.A. 1947, § 3-717; Acts 1987, No. 248, § 8; 1991, No. 530, § 1; 1997, No. 451, § 26; 2003, No. 994, § 7; 2007, No. 1020, § 11; 2009, No. 1480, § 28.

**Amendments.** The 2007 amendment substituted “paper ballots” for “ballots” in the section heading and the introductory paragraph; substituted “handwritten on the ballot” for “written on” in (2); substi-

tuted “marks for more . . . the voter's intent” for “a greater number of names for any one (1) office than the number of persons required to fill the office, it shall be considered fraudulent as to the whole of the names designated to fill the office, but no further” in (4); deleted former (8); and made related changes.

The 2009 amendment rewrote the section heading and the section.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Election Law, Help America Vote Act, 26 U. Ark. Little Rock L. Rev. 398.

## CASE NOTES

## ANALYSIS

Constitutionality.  
Candidate's Death or Ineligibility.  
Local Option Elections.  
Presumption.  
Suspending Vote Count.  
Wrong Precinct.

**Constitutionality.**

Subdivision (2) is constitutional since when properly interpreted, it applies only to those who can handwrite and where handicapped persons are concerned, the handwriting requirement must be construed as including handwriting of person assisting the voter. *Smith v. Arkansas*, 385 F. Supp. 703 (E.D. Ark. 1974) (decision prior to 1987 amendment).

**Candidate's Death or Ineligibility.**

When a deceased or disqualified candidate wins an election, the votes received by the deceased or ineligible candidate are not void, but are effectual to prevent the opposing candidate from being chosen. *Rubens v. Hodges*, 310 Ark. 451, 837 S.W.2d 465 (1992).

Subdivision (7) does not apply to votes cast for a candidate who was disqualified. *Helton v. Jacobs*, 346 Ark. 344, 57 S.W.3d 180 (2001).

**Local Option Elections.**

In local option elections, counting of ballots by judges and clerks before for-

warding the ballots to county election commission was proper, since § 3-8-206 governing local option elections stipulates that elections shall be conducted in conformity with general election law which provides for counting by judges and clerks. *Bonds v. Rogers*, 219 Ark. 319, 241 S.W.2d 371 (1951) (decision under prior law).

**Presumption.**

There is a presumption that all votes cast at the election are lawful until their authenticity is impeached by affirmative evidence. *Phillips v. Earngey*, 321 Ark. 476, 902 S.W.2d 782 (1995).

**Suspending Vote Count.**

Plaintiff was not entitled to the vote count that apparently existed on the night of the election, where the election officials temporarily ceased counting ballots because they could not find three missing ballots. No fraud was alleged or involved in stopping and resuming the vote count the next morning. *Ashcraft v. Cox*, 310 Ark. 703, 839 S.W.2d 219 (1992).

**Wrong Precinct.**

Voters, who voted in wrong precinct after township had been divided into two precincts, did not cast valid votes despite custom allowing voting in wrong precinct. *Logan v. Moody*, 219 Ark. 697, 244 S.W.2d 499 (1951) (decision under prior law).

**Cited:** *Cartwright v. Carney*, 286 Ark. 121, 690 S.W.2d 716 (1985).

## 7-5-316. Presence of candidate — Designation of representatives.

(a) After the polls have been closed, the counting of votes shall be open to the public, and any candidate or political party may be present in person or by representative designated in writing pursuant to § 7-5-312 at the count of the ballots in any election for the purpose of determining whether or not the ballots in any election precinct are fairly and accurately counted.

(b) The representatives of political parties may be designated and authorized by either the chair or the secretary of the state or county



committee, and representatives of candidates may be designated and authorized by the candidate represented.

**History.** Acts 1969, No. 465, Art. 7, § 15; 1971, No. 261, § 12; A.S.A. 1947, § 3-715; Acts 1997, No. 451, § 27; 2003, No. 1154, § 2; 2009, No. 1480, § 29.

**Amendments.** The 2009 amendment deleted the last sentence in (a).

### CASE NOTES

#### Violations.

There was no violation of this section where the voting tabulator was located near the rail in the courtroom of the courthouse, people were allowed on either side of the rail during the process, and no

barrier existed in the courtroom which would preclude observation of the tabulating process. *McGruder v. Phillips County Election Comm'n*, 850 F.2d 406 (8th Cir. 1988).

### 7-5-317. Processing and delivery of election materials.

(a) After the polls close, all of the election materials shall be processed and delivered in the following manner:

(1) The poll workers shall total the number of voters on the list-of-voters form and certify and attest the form;

(2) The list-of-voters form, precinct voter registration list, voter registration application forms, and other recordkeeping supplies shall be delivered to the county clerk;

(3) Certificates of election results and tally sheets:

(A) One (1) copy of the certificate of election results with one (1) copy of the tally sheets, if any, shall be delivered to the county clerk; and

(B) One (1) copy of the certificate of election results shall be returned with one (1) copy of the tally sheets, if any, and reports of challenges of voters, if any, to the county board of election commissioners;

(4) Ballots:

(A) The poll workers shall securely envelope any voted ballots separately from any unused ballots and place the ballots in a container with a numbered seal and then deliver the ballots with the tally sheets, if any, and other election materials to the county board of election commissioners; and

(B) All cancelled ballots shall be preserved separately from the other ballots and returned to the county board of election commissioners; and

(5) Sealed stub boxes shall be delivered to the county treasurer for storage.

(b) All of the election materials and returns shall be delivered to the county board of election commissioners by the poll workers immediately after the polls close.

**History.** Acts 1969, No. 465, Art. 7, § 9; Acts 1995, No. 963, § 9; 1997, No. § 18; A.S.A. 1947, § 3-718; 1995, No. 946, 451, § 28; 2001, No. 797, § 1; 2005, No.

67, § 9; 2009, No. 959, § 15; 2009, No. 1480, § 30.

**Amendments.** The 2009 amendment by No. 959 inserted (a)(2) and redesignated the remaining subdivision accordingly; and in (a)(4)(A) and (b), substituted

“poll workers” for “election officials” and inserted “of election commissioners.”

The 2009 amendment by No. 1480 rewrote (a); and substituted “poll workers” for “election official” in (b).

## CASE NOTES

### ANALYSIS

Certificate as Evidence.  
Return of Election Materials.  
Statute Mandatory.  
Voting Lists.

#### **Certificate as Evidence.**

Court properly refused to cast out absentee votes and allowed certificate of results in evidence where ballot box and ballots were lost or destroyed, but there was no evidence showing fraud or corruption or challenging correctness of certificate. *Newport v. Smith*, 236 Ark. 626, 367 S.W.2d 742 (1963) (decision under prior law).

#### **Return of Election Materials.**

It is not a violation of the federal Voting Rights Act to use the sheriff's office and personnel to return election materials as a fact of fiscal necessity due to the county's limited budget although it would be a violation of state law. *McGruder v. Phillips*

*County Election Comm'n*, 850 F.2d 406 (8th Cir. 1988).

#### **Statute Mandatory.**

Former law detailing method of delivery of ballots, certificate and other materials was mandatory. *Brooks v. Pullen*, 187 Ark. 80, 58 S.W.2d 682 (1933) (decision under prior law).

#### **Voting Lists.**

Persons contesting local option election had a statutory right to examine voting list which election officials had sealed in ballot boxes. *Baker v. Boone*, 230 Ark. 843, 327 S.W.2d 85 (1959) (decision under prior law).

Voter lists and list of persons applying for absentee ballots were public records and could be copied as well as inspected. *Whorton v. Gaspard*, 239 Ark. 715, 393 S.W.2d 773 (1965) (decision under prior law).

**Cited:** *Ashcraft v. Cox*, 310 Ark. 703, 839 S.W.2d 219 (1992).

## **7-5-318. Failure to deliver materials — Penalty — Messenger to obtain delinquent returns.**

(a) If the poll workers fail to deliver the ballots, ballot stubs, certification of election, voter lists, and other election returns in the manner provided for in § 7-5-317, the poll workers shall forfeit the sum of two hundred dollars (\$200) to be recovered by action of debt in the name of the state for the use of the county.

(b) Upon failure of delivery of the election returns immediately after the polls close, the county board of election commissioners shall dispatch a peace officer to obtain the election returns, and all expenses incurred by sending the messenger shall be paid by the defaulting poll workers.

**History.** Acts 1969, No. 465, Art. 7, § 19; A.S.A. 1947, § 3-719; Acts 1997, No. 451, § 29; 2001, No. 798, § 1; 2009, No. 959, § 15.

**Amendments.** The 2009 amendment substituted “poll workers” for “election officials” in three places.

**CASE NOTES**

**Cited:** Ashcraft v. Cox, 310 Ark. 703, 839 S.W.2d 219 (1992).

**7-5-319. Recount.**

(a)(1) Any candidate voted for who may be dissatisfied with the returns from any precinct shall have a recount of the votes cast therein upon the candidate's presenting the county board of election commissioners with a petition requesting the recount.

(2) When the number of outstanding absentee ballots of overseas voters is not sufficient to change the results of the election, the candidate must present the petition no later than two (2) days after the county board declares preliminary and unofficial results of the election, including a statement of the number of outstanding absentee ballots of overseas voters.

(3) When the number of outstanding absentee ballots of overseas voters is sufficient to potentially change the results of the election, the candidate must present the petition at any time before the county board finally completes the canvass of the returns of the election and certifies the result.

(b) At the time that the petition requesting the recount is presented, the county board shall provide to the candidate requesting the recount a copy of the test results on the voting machines and the electronic vote tabulating devices. Only one (1) recount per candidate per election shall be permitted. The county board shall certify the results of the last recount. The county board may upon its own motion conduct a recount of the returns from any or all precincts.

(c)(1) For any recount of an election in which ballots are cast using a direct recording electronic voting machine with a voter-verified paper audit trail, the voter-verified paper audit trail shall serve as the official ballot to be recounted.

(2) The county board of election commissioners either may:

(A) Manually sum the total votes for each candidate involved in the recount that is printed on the voter-verified paper audit trail; or

(B) Count by hand the votes for each candidate involved in the recount as shown on the voter-verified paper audit trail.

(3) If the voter-verified paper audit trail is damaged or for some other reason is incapable of being used for a recount, the paper record produced by the machine for manual audit shall be the official ballot to be recounted.

(4) If the voting machine is exempt from the requirement to have a voter-verified paper audit trail and does not have one, the paper record produced by the machine for manual audit shall be the official ballot to be recounted.

(d) For the recount of an election in which paper ballots are used, the county board shall open the package containing the ballots and recount the ballots in the manner prescribed by law for the count to be made by



the election officials in the first instance, or if there is a determination by the county board that the voting machine or electronic vote tabulating device may be malfunctioning, it may recount the ballots by any manner prescribed by law.

(e) The result as found upon the recount, if it differs from that certified by the election officials, shall be included in the canvass as the vote for the particular precinct for which the recount was ordered and made.

(f) After the recount is completed, the ballots shall again be sealed and kept as provided by law.

(g)(1) The costs for any recount must be borne by the candidate petitioning for it, and payment of the costs must be made to the county board prior to the recount in an amount determined by the county board.

(2) In the event that the outcome of the election is altered by recount, the costs of the recount shall be refunded to the candidate who petitioned for the recount.

(h) The costs of any recount shall be based on the actual costs incurred to conduct the recount, but in no instance shall the amount charged to conduct a recount exceed the rate of twenty-five cents (25¢) per vote cast in the precincts where the recount is requested or a total of two thousand five hundred dollars (\$2,500) for the entire county, whichever is less.

(i) Within forty-eight (48) hours after a petition for recount is filed, the county board of election commissioners shall notify all candidates whose election could be affected by the outcome of the recount.

**History.** Acts 1969, No. 465, Art. 5, § 8; A.S.A. 1947, § 3-508; Acts 1993, No. 430, § 1; 1997, No. 451, § 30; 1999, No. 1023, § 1; 2001, No. 1475, § 4; 2003, No. 1038, § 1; 2003, No. 1165, § 5; 2005, No. 2233, § 7; 2009, No. 1480, § 31.

**Amendments.** The 2009 amendment added (c)(2) through (c)(4).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Election Law, 24 U. Ark. Little Rock L. Rev. 465.

Survey of Legislation, 2003 Arkansas General Assembly, Election Law, Notice to Candidate Affected by Recount, 26 U. Ark. Little Rock L. Rev. 403.

## CASE NOTES

### ANALYSIS

Absence of Commissioner.  
Failure to Recount.  
Mandamus.  
Petition.

### Absence of Commissioner.

Absence of one commissioner during recount, or appointment of another individual to assist in recount, did not invali-

date recount. *Bonds v. Rogers*, 219 Ark. 319, 241 S.W.2d 371 (1951) (decision under prior law).

### Failure to Recount.

Where petitioners claimed that the board of election commissioners failed to act on their petition for a recount, the circuit court could not order the board to hold a recount but could order the board to either act on the petition or deny it. *Henry*

v. Stuart, 251 Ark. 361, 473 S.W.2d 164 (1971).

**Mandamus.**

Where an election was held at which a tax levy was defeated, the circuit court had jurisdiction of a petition for mandamus filed by citizens and taxpayers within the time prescribed by law to require the election officials to recount the ballots on that question. Wooten v. Fielder, 194 Ark.

72, 105 S.W.2d 547 (1937) (decision under prior law).

**Petition.**

Letter which did not set forth the particulars of the claimed election irregularities was held insufficient as a petition for recount under this section. Cartwright v. Carney, 286 Ark. 121, 690 S.W.2d 716 (1985).

**7-5-320. [Repealed.]**

**Publisher's Notes.** This section, concerning elections to fill a vacancy when there is only one candidate, was repealed

by Acts 2009, No. 1480, § 32. This section was derived from Acts 1997, No. 122, § 1.

**SUBCHAPTER 4 — ABSENTEE VOTING**

SECTION.

- 7-5-401. Duties of county clerk.
- 7-5-402. Voter qualification.
- 7-5-403. Designated bearers, authorized agents, and administrators.
- 7-5-404. Applications for ballots.
- 7-5-405. Application form.
- 7-5-406. Members of uniformed services and other citizens residing outside the United States.
- 7-5-407. Preparation and delivery of ballots.
- 7-5-408. List of applications — Preparation, preservation, and inspection.
- 7-5-409. Materials furnished to qualified voters.
- 7-5-410. Instructions and notice included

SECTION.

- with voting materials — Other enclosures prohibited.
- 7-5-411. Methods of voting absentee.
- 7-5-412. Marking and return of absentee ballots — Delivery of mailed absentee ballots.
- 7-5-413. Voting machines — Related duties.
- 7-5-414. Appointment of election clerks — Qualifications.
- 7-5-415. Compensation of county clerk for extra deputy.
- 7-5-416. Counting of absentee ballots.
- 7-5-417. Challenge of absentee votes.
- 7-5-418. Early voting.
- 7-5-419. [Transferred.]

**Effective Dates.** Acts 1969, No. 465, Art. 13, § 10: approved Apr. 17, 1969. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the present election laws are ancient and outdated in part and have caused and are causing much confusion and controversy, that there are particular problem areas in the present law which need immediate legislation in order to resolve same, that elections are and will continue to be held and conducted in this atmosphere of confusion and controversy until these problem areas are resolved and this Act being

necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in force and effect from and after its passage."

Acts 1970 (Ex. Sess.), No. 6, § 3: Approved Mar. 13, 1970. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the present election laws do not allow the use of voting machines for absentee balloting; that some counties of this state are not equipped for voting other than with voting machines; that prevention of such voting causes a great

confusion; that an election may be held before ninety (90) days after the adjournment of this session and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in force and effect from and after its passage."

Acts 1970 (Ex. Sess.), No. 28, § 4: approved Mar. 13, 1970. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the election laws provide a different closing time for casting absentee ballots than that for casting ballots at the polls on election day; that elections are, and will continue to be, held while this erroneous difference in time exists making the procedure for casting absentee ballots confusing and discriminating, and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in force and effect from and after its passage."

Acts 1977, No. 739, § 3: Mar. 24, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this act are essential for administering the election laws of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1789, § 12: Emergency clause failed. Emergency clause provided: "It is found and determined by the General Assembly that Amendment 80 to the

Arkansas Constitution becomes effective on July 1, 2001; that this implements the nonpartisan election of justices and judges as mandated by Amendment 80; and that to effectively implement Amendment 80, this act should become effective on July 1, 2001. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective on July 1, 2001."

Acts 2001, No. 1839, § 35: became law without governor's signature. Approved Apr. 20, 2001. Emergency clause provided: "It is found and determined by the General Assembly that various provisions of the Arkansas Code relating to campaign financing and ethics are vague or otherwise in need of modification; that this act accomplishes those purposes; and that this act should go into effect as soon as possible so that those persons who are subject to the provisions of the various ethics and campaign finance statutes receive the benefit of the clarifications as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 2233, § 48: Jan. 1, 2006.

Acts 2011, No. 1185, § 21: Oct. 2, 2011.

## RESEARCH REFERENCES

**Am. Jur.** 26 Am. Jur. 2d, Elections, § 243 et seq.

**C.J.S.** 29 C.J.S., Elections, § 210(1) et seq.

### 7-5-401. Duties of county clerk.

(a) The county clerk shall be the custodian of the absentee ballots and early voting ballots for any early voting conducted by the county clerk.

(b) The county clerk shall be furnished a suitable room at the county courthouse or other location designated for the purpose of exercising all



the powers and duties concerning the application for, the issuance of, and the voting of absentee and early voting ballots required by law of the county clerk.

(c) In counties with more than one (1) county seat, the county clerk shall conduct:

(1) Absentee voting in the courthouse or other room provided by the county; and

(2) Early voting at the county clerk’s designated early voting location in each county seat if the county clerk conducts early voting under § 7-5-418.

**History.** Acts 1969, No. 465, Art. 9, § 1; A.S.A. 1947, § 3-901; Acts 1995, No. 686, § 1; 1995, No. 948, § 1; 2005, No. 67, § 10; 2007, No. 556, § 2.

**Amendments.** The 2007 amendment

added the (a) and (b) designations; deleted “at the courthouse” following “clerk” in (a); substituted “or other location designated for the purpose of exercising” for “and shall exercise” in (b); and added (c)

CASE NOTES

**Mandamus.**

Where the county clerk was unable to fully perform his statutory duty until the county election commissioners prepared and furnished him the requested absentee ballots, the county clerk had the legal

right and standing to seek and secure a writ of mandamus to compel the commissioners to supply the absentee ballots required by law. *Swiderski v. Goggins*, 257 Ark. 228, 515 S.W.2d 644 (1974).

7-5-402. Voter qualification.

The following persons, if possessing the qualifications of electors, may cast an absentee ballot in any election:

(1) Any person who will be unavoidably absent from his or her voting place on the day of the election; and

(2) Any person who will be unable to attend the polls on election day because of illness or physical disability.

**History.** Acts 1969, No. 465, Art. 9, § 3; A.S.A. 1947, § 3-903; Acts 1993, No. 593,

§ 1; 1995, No. 686, § 2; 1995, No. 948, § 2.

RESEARCH REFERENCES

**Ark. L. Notes.** Cihak, 2007 Election Law Issues, Legislation and Reforms, 2007 Ark. L. Notes 1.

CASE NOTES

**ANALYSIS**

Illness or Physical Disability.  
Reason for Absence.

**Illness or Physical Disability.**

Where voter was visiting his sick father-in-law in a hospital but was not ill or physically disabled himself, he was not

unavoidably absent because of illness or physical disability. *Roach v. Kirk*, 228 Ark. 958, 311 S.W.2d 525 (1958) (decision under prior law).

#### **Reason for Absence.**

An elector who gives as his reason for voting by absentee ballot the words "out of town" is in substantial compliance with the law as he would obviously be unavoidably absent from his voting precinct. *Lehigh v. Wooley*, 240 Ark. 976, 403 S.W.2d 79 (1966) (decision under prior law).

Evidence sufficient to show unavoidable absence warranting vote by absentee ballot. *Simonetti v. Brick*, 266 Ark. 551, 587 S.W.2d 16 (1979).

It is not essential that the voter give more than the primary reason he will be unavoidably absent from his voting place.

*Forrest v. Baker*, 287 Ark. 239, 698 S.W.2d 497 (1985).

"Unable to get to poll," "work," "my age, I cannot get there," "will not be able to get to the poll before 6:30," "my husband doesn't get home from work in time," and "sickness in the family" are all valid reasons given on the absentee ballot application, when there is no allegation that any of the applications are false or that any of the voters can get to their polling places. *Forrest v. Baker*, 287 Ark. 239, 698 S.W.2d 497 (1985).

The court properly invalidated the ballots of 495 absentee voters for failure to indicate on their absentee-ballot applications a statutory reason for voting absentee. *Womack v. Foster*, 340 Ark. 124, 8 S.W.3d 854 (2000).

### **7-5-403. Designated bearers, authorized agents, and administrators.**

(a)(1) A designated bearer may obtain absentee ballots from the county clerk for not more than two (2) voters.

(2)(A) At no time shall a designated bearer have more than two (2) absentee ballots in his or her possession.

(B) If the county clerk knows or reasonably suspects that a designated bearer has more than two (2) absentee ballots in his or her possession, the county clerk shall notify the prosecuting attorney.

(3)(A) A designated bearer receiving an absentee ballot from the county clerk for a voter shall deliver the absentee ballot directly to the voter.

(B) A designated bearer receiving an absentee ballot from a voter shall deliver the absentee ballot directly to the county clerk.

(4)(A) A designated bearer may deliver to the county clerk the absentee ballots for not more than two (2) voters.

(B) The designated bearer shall be named on the voter statement accompanying the absentee ballot.

(5) In order to obtain an absentee ballot from the county clerk:

(A) The designated bearer shall show a form of current photographic identification to the county clerk;

(B) The county clerk shall print the designated bearer's name and address beside the voter's name on a register;

(C) The designated bearer shall sign the register under oath indicating receipt of the voter's absentee ballot; and

(D) The county clerk shall indicate beside the designated bearer's name on the register that he or she obtained an absentee ballot for a voter.

(6) Upon delivering an absentee ballot to the county clerk:

(A) The designated bearer shall present current and valid photographic identification to the county clerk;

(B) The county clerk shall print the designated bearer's name and address beside the voter's name on a register;

(C) The designated bearer shall sign the register under oath indicating delivery of the voter's absentee ballot; and

(D) The county clerk shall not accept an absentee ballot from a designated bearer who does not sign the register under oath.

(7) When providing an absentee ballot to a designated bearer or receiving an absentee ballot from a designated bearer, the county clerk shall provide to the designated bearer a written notice informing the designated bearer that:

(A) A designated bearer may obtain ballots for no more than two (2) voters;

(B) A designated bearer shall at no time have more than two (2) ballots in his or her possession;

(C) A designated bearer may deliver ballots to the county clerk for no more than two (2) voters; and

(D) Possession of an absentee ballot with the intent to defraud a voter or an election official is a felony under § 7-1-104.

(b)(1) An authorized agent may deliver applications for absentee ballots to the county clerk and obtain absentee ballots from the county clerk for not more than two (2) voters who cannot cast a ballot at the appropriate polling place on election day because the voter is a patient in a hospital or long-term care or residential care facility licensed by the state.

(2) At no time shall an authorized agent have more than two (2) absentee ballots in his or her possession.

(3)(A) An authorized agent receiving an absentee ballot from the county clerk for a voter shall deliver the absentee ballot directly to the voter.

(B) An authorized agent receiving an absentee ballot from a voter shall deliver the absentee ballot directly to the county clerk.

(4)(A) In order for an authorized agent to obtain a ballot from the county clerk, the authorized agent shall submit to the county clerk an affidavit from the administrative head of a hospital or long-term care or residential care facility licensed by the state that the applicant is a patient of the hospital or long-term care or residential care facility licensed by the state and is thereby unable to vote on the election day at his or her regular polling site.

(B) A copy of the affidavit shall be retained by the county clerk as an attachment to the application for an absentee ballot.

(5) In order to obtain an absentee ballot from the county clerk, the:

(A) Authorized agent shall present current photographic identification to the clerk;

(B) Clerk shall print the authorized agent's name and address beside the voter's name on a register; and

(C) Authorized agent shall sign the register under oath indicating receipt of the voter's ballot.

(6) Upon delivering an absentee ballot to the county clerk, the:



(A) Authorized agent shall show some form of current photographic identification to the clerk;

(B) Clerk shall print the authorized agent's name and address beside the voter's name on a register; and

(C) Authorized agent shall sign the register under oath indicating delivery of the voter's ballot.

(c)(1) The county clerk shall keep a register of designated bearers and authorized agents.

(2) The designated bearer and authorized agent register shall contain the following oath on each page: "IF YOU PROVIDE FALSE INFORMATION ON THIS FORM, YOU MAY BE GUILTY OF PERJURY AND SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR UP TO TEN (10) YEARS, OR BOTH, UNDER FEDERAL AND STATE LAWS."

(d)(1) An administrator may deliver to the county clerk an application for an absentee ballot for any voter who is a patient of a long-term care or residential care facility licensed by the state and who names the administrator on his or her application as the administrator of the facility where the voter resides.

(2) An administrator may receive absentee ballots for as many qualified residents of the facility as apply for absentee ballots upon presentation of photographic identification to the county clerk.

(3)(A) An administrator may deliver the absentee ballot to the county clerk for any voter who names the administrator on his or her application and voter statement.

(B) Absentee ballots may be delivered to the county clerk in person by the administrator or by mail.

(4) An administrator shall submit to the county clerk an affidavit, signed and dated by the administrator, stating:

(A) That he or she is the administrative head of a long-term care or residential care facility licensed by the state;

(B) The name and address of the facility; and

(C) That he or she has been authorized by the voters of his or her facility who named him or her in their applications for absentee ballot and voter statement to deliver their absentee ballots.

(e) Any person who knowingly makes a false statement on an affidavit required by this section shall be guilty of perjury and subject to a fine of up to ten thousand dollars (\$10,000) or imprisonment of up to ten (10) years.

**History.** Acts 2007, No. 543, § 2; 2009, No. 250, §§ 15–17; 2009, No. 959, §§ 16, 22; 2011, No. 1043, § 1.

**A.C.R.C. Notes.** This section was formerly codified as § 7-5-419.

**Publisher's Notes.** Former § 7-5-403 has been renumbered by Acts 2009, No. 959, § 22 as § 7-5-404.

Former § 7-5-419 has been renumbered by Acts 2009, No. 959, § 22 as § 7-5-403.

**Amendments.** The 2009 amendment by No. 250 inserted "designated" preceding "bearer" in (a)(4)(B) and (a)(5)(B); inserted "county" preceding "clerk" throughout (a)(5) and (a)(6); inserted "absentee"

preceding “ballot” in (a)(5)(C) and (a)(6)(C); and inserted “and valid” in (a)(6)(A).

The 2009 amendment by No. 959 deleted “deliver applications for absentee ballots to the county clerk and” following

“bearer may” in (a)(1); deleted “On the day of an election” at the beginning of (b)(1), and made related changes; and inserted “by the administrator” in (d)(3)(B).

The 2011 amendment added (a)(2)(B), (a)(5)(D), (a)(6)(D), and (a)(7).

#### **7-5-404. Applications for ballots.**

(a)(1) Applications for absentee ballots must be signed by the applicant and verified by the county clerk by checking the voter’s name, address, date of birth, and signature from the registration records or, if sent by electronic means, the application must bear a verifiable facsimile of the applicant’s signature.

(2) Delivery of the request for an absentee ballot to the county clerk may be made in one (1) of the following ways, and in no other manner:

(A) For applications submitted using the form prescribed in § 7-5-405:

(i) In person at the office of the county clerk of the county of residence of the voter no later than the time the county clerk’s office regularly closes on the day before election day;

(ii) Applications by mail must be received in the office of the county clerk of the county of residence of the voter not later than seven (7) days before the election for which the application was made;

(iii) A designated bearer may deliver the completed application to the office of the county clerk of the county of residence of the applicant not later than the time the county clerk’s office regularly closes on the day before the day of the election;

(iv) A person declared as the authorized agent of the applicant may deliver the application to the office of the county clerk of the county of residence of the applicant not later than 1:30 p.m. on the day of the election;

(v) An administrator may deliver the application in person at the office of the county clerk of the county of residence of the voter no later than the time the county clerk’s office regularly closes on the day before election day; or

(vi)(a) Delivery by electronic means to the county clerk’s office of the county of residence of the voter not later than seven (7) days before the election for which the application was made.

(b) The completed application sent by electronic means will be accepted only upon verification of the facsimile signature of the applicant by the county clerk.

(c) Once verified as a reasonable likeness of the voter’s signature, the signature appearing on a copy of an application sent by electronic means shall be presumed to be authentic until proven otherwise; or

(B) If the applicant does not use the form prescribed in § 7-5-405, he or she may make an application for an absentee ballot as follows:

(i) A letter or postcard must be received in the office of the county clerk not later than seven (7) days before the date of the election. The letter or postcard shall contain information sufficient for the county

board of election commissioners and the county clerk to accept the letter or postcard in lieu of the application form; or

(ii) An applicant may transmit a written request for an absentee ballot by electronic means that shall contain the voter's signature and other information sufficient for acceptance in lieu of the application form.

(b)(1) Any person eligible to vote by absentee ballot may request the county clerk to mail to an address within the continental United States an application for an absentee ballot.

(2)(A) For those persons voting by absentee ballot who reside outside the county in which they are registered to vote, the application shall remain in effect for one (1) year unless revoked by the voter, and the county clerk shall thereafter automatically mail, no later than twenty-five (25) days before each election, an absentee ballot for each election.

(B)(i) Except for persons of long-term care or residential facilities licensed by the state or other persons who are voters with disabilities as defined in § 7-5-311(d), for those persons voting by absentee ballot who reside within the county in which they are registered to vote, the application shall be valid for only one (1) election cycle.

(ii) The election cycle shall include any one (1) election and the corresponding runoff election.

(c) The following may request an absentee ballot for one (1) or more elections, up to and including the next two (2) regularly scheduled general elections for federal office, including without limitation any runoff elections that may occur as a result of the outcome of the general elections, by submitting one (1) application during that period of time in the manner provided under subsection (a) of this section:

(1) A citizen of the United States temporarily residing outside the territorial limits of the United States;

(2) A member of the uniformed services of the United States while in active duty or service, including his or her spouse or dependent, who by reason of active duty or service of the member is absent from the place of residence where the member, spouse, or dependent is otherwise qualified to vote; and

(3) A member of the Merchant Marine while in active duty or service, including his or her spouse or dependent, who by reason of the active duty or service of the member is absent from the place of residence where the member, spouse, or dependent is otherwise qualified to vote.

(d) As used in this section, "electronic means" means a scanned image sent by:

(1) Electronic mail; or

(2) Facsimile machine.

**History.** Acts 1969, No. 465, Art. 9, § 4; § 1; 1993, No. 1201, § 1; 1995, No. 686, 1981, No. 685, § 1; 1983, No. 430, § 1; § 3; 1995, No. 948, § 3; 1997, No. 1092, 1985, No. 1019, § 1; A.S.A. 1947, § 3-904; § 1; 1999, No. 1111, § 1; 1999, No. 1538, Acts 1987, No. 248, § 9; 1987, No. 843, §§ 2, 3; 2003, No. 994, § 8; 2005, No. 67, § 1; 1991, No. 863, § 1; 1993, No. 303, § 11; 2007, No. 543, § 1; 2007, No. 556,



§ 3; 2009, No. 250, § 4; 2009, No. 959, § 16; 2011, No. 1188, § 1.

**A.C.R.C. Notes.** This section was formerly codified as § 7-5-403.

**Publisher's Notes.** Former § 7-5-404, concerning voting by mail, was repealed by identical Acts 1995, Nos. 686 and 948, § 4. The section was derived from Acts 1969, No. 465, Art. 9, § 16; 1970 (Ex. Sess.), No. 6, § 1; A.S.A. 1947, § 3-916.

Former § 7-5-403 has been renumbered by Acts 2009, No. 959, § 16 as § 7-5-404.

**Amendments.** The 2007 amendment by No. 543 deleted the (a)(2)(A)(iv)(a) designation; deleted former (a)(2)(A)(iv)(b) and (a)(2)(A)(iv)(c); and made related changes.

The 2007 amendment by No. 556 rewrote (a)(2)(A)(iv) and (a)(2)(A)(v); redesignated former (a)(2) and (a)(3) as (a)(2)(A)(v)(b) and (a)(2)(A)(v)(C); and deleted "and the District of Columbia, and their spouses and dependents when residing with or accompanying them" following

the second occurrence of "United States" in (c).

The 2009 amendment by No. 250 redesignated the last sentence of (b)(2)(B) as (b)(2)(B)(ii), redesignated the remainder of (b)(2)(B) accordingly, and made minor stylistic changes.

The 2009 amendment by No. 959 inserted (a)(2)(A)(v) and redesignated the remaining subdivision accordingly and made a related change; and made a minor stylistic change in (b)(2)(A).

The 2011 amendment substituted "by electronic means" for "by facsimile machine transmitted over telephone lines" in (a)(1); substituted "by electronic means" for "by facsimile machine transmission" in (a)(2)(A)(vi)(a); substituted "application sent by electronic means" for "facsimile-transmitted application" in (a)(2)(A)(vi)(b); substituted "a copy of an application sent by electronic means" for "a facsimile copy of an application" in (a)(2)(A)(vi)(c); substituted "by electronic means" for "over the telephone lines" in (a)(2)(B)(ii); rewrote (c); and added (d).

## RESEARCH REFERENCES

**Ark. L. Notes.** Cihak, 2007 Election Law Issues, Legislation and Reforms, 2007 Ark. L. Notes 1.

## CASE NOTES

### ANALYSIS

Date of Application.

Delivery Method.

Strict Compliance Required.

Voter's Signature.

### Date of Application.

Failure of clerk to place on application the date of the application does not make absentee votes invalid. *Logan v. Moody*, 219 Ark. 697, 244 S.W.2d 499 (1951) (decision under prior law).

### Delivery Method.

To utilize the statutory provision for delivery of an absentee-ballot application by an authorized agent, the voter must be

in a hospital or nursing home. *Womack v. Foster*, 340 Ark. 124, 8 S.W.3d 854 (2000).

### Strict Compliance Required.

The provisions of law relating to the duties of voters in applying for, and casting, absentee ballots, must be strictly complied with. *Bingamin v. Eureka Springs*, 241 Ark. 477, 408 S.W.2d 607 (1966) (decision under prior law).

### Voter's Signature.

The application for absentee ballot must be signed by the voter. *Phillips v. Melton*, 222 Ark. 162, 257 S.W.2d 931 (1953) (decision under prior law).

**Cited:** *Martin v. Hefley*, 259 Ark. 484, 533 S.W.2d 521 (1976).

**7-5-405. Application form.**

(a)(1) Applications for absentee ballots may be made on a form or forms prescribed by the Secretary of State and furnished by the county clerk at least sixty (60) days before the election.

(2) The form or forms shall contain the following information:

(A) The following statement:

“IF YOU PROVIDE FALSE INFORMATION ON THIS FORM, YOU MAY BE GUILTY OF PERJURY AND SUBJECT TO A FINE OF UP TO \$10,000 OR IMPRISONMENT FOR UP TO 10 YEARS.”;

(B) A statement in which the voter must indicate that he or she is requesting an absentee ballot because he or she will be:

(i) Unavoidably absent from the polling site on election day;

(ii) Unable to attend the polls on election day because of illness or physical disability; or

(iii) Unable to attend the polls on election day because of residence in a long-term care or residential facility licensed by the state;

(C) A statement by the voter indicating whether he or she resides outside the county;

(D) A statement indicating whether the voter is a United States citizen residing outside the territorial limits of the United States;

(E) A statement indicating whether the voter is in active service as a member of the armed services of the United States;

(F) Mailing information for the ballot or the name and signature of a designated bearer, an administrator, or an authorized agent;

(G) The date, the voter's printed or typed name, voting residence address, date of birth, and the voter's signature attesting to the correctness of the information provided under penalty of perjury; and

(H) The election in which the voter wishes to cast an absentee ballot.

(b) The Secretary of State may prescribe separate absentee ballot application forms for:

(1)(A) Persons who reside within the county in which they are registered to vote and will be unavoidably absent from the polls on the date of the election.

(B) The application shall be valid for one (1) election cycle, which includes any one (1) election and the corresponding runoff election;

(2)(A) Persons whose application would be valid for one (1) calendar year.

(B) This includes the following:

(i) Persons who reside outside the county in which they are registered to vote;

(ii) Persons in long-term care or residential facilities licensed by the state; and

(iii) Voters with disabilities; and

(3) Persons whose applications would be valid through the next two (2) regularly scheduled general elections for federal office, including any resulting runoff elections.

(c) Any person may distribute blank applications for absentee ballots.

**History.** Acts 1969, No. 465, Art. 9, § 5; 1971, No. 184, § 2; 1983, No. 430, § 2; 1985, No. 1019, § 2; A.S.A. 1947, § 3-905; Acts 1987, No. 843, § 2; 1989, No. 912, § 7; 1993, No. 303, § 2; 1993, No. 1201, § 2; 1995, No. 686, § 5; 1995, No. 948, § 5; 1997, No. 1092, § 2; 1999, No. 918, § 1; 2001, No. 1789, § 9; 2003, No. 1202, § 1; 2003, No. 1275, § 1; 2005, No. 67, § 12; 2007, No. 543, § 3; 2007, No. 556, § 4; 2009, No. 250, §§ 5, 6; 2011, No. 1188, § 2.

**Amendments.** The 2007 amendment by No. 543 deleted former (a)(2)(F) and redesignated the remaining subsections accordingly.

The 2007 amendment by No. 556, in (a)(2)(D), deleted “or spouse or dependent”

following “citizen” and deleted “or District of Columbia” following the second occurrence of “States”; added (a)(2)(E) and redesignated the remaining subsections accordingly; deleted “if requested by the voter” following “elections” in (b)(3)(A); and deleted “and the District of Columbia and their spouses and dependents when residing with or accompanying them” following the second occurrence of “States” in (b)(3)(B).

The 2009 amendment substituted “armed” for “uniformed” in (a)(2)(E); and substituted “an absentee ballot” for “a ballot” in (a)(2)(H).

The 2011 amendment deleted former (b)(3)(B) and redesignated the remaining subdivision as (b)(3).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Election Law, 24 U. Ark. Little Rock L. Rev. 465.

## CASE NOTES

### ANALYSIS

Delivery Method.  
Reason for Absence Required.  
Strict Compliance Required.  
Voter’s Signature.

### Delivery Method.

The plain language of both this section and the absentee-ballot application form indicate that an affidavit verifying the voter’s medical status is required when an absentee voter authorizes an agent to deliver his or her application to the county clerk, and is not required if the absentee voter chooses any of the other four statutory methods for delivering the absentee-ballot application. *Womack v. Foster*, 340 Ark. 124, 8 S.W.3d 854 (2000).

### Reason for Absence Required.

Where application for absentee ballot was left blank in the space for showing the

reason for being absent from the polls, the applicant was not qualified to vote an absentee ballot since under the law the applicant must first show that he would be “unavoidably absent” on the date of election. *Roach v. Kirk*, 228 Ark. 958, 311 S.W.2d 525 (1958) (decision under prior law).

### Strict Compliance Required.

The provisions of law relating to the duties of voters in applying for, and casting, absentee ballots, must be strictly complied with. *Bingamin v. Eureka Springs*, 241 Ark. 477, 408 S.W.2d 607 (1966) (decision under prior law).

### Voter’s Signature.

The application for absentee ballot must be signed by the voter. *Phillips v. Melton*, 222 Ark. 162, 257 S.W.2d 931 (1953) (decision under prior law).

**Cited:** *Forrest v. Baker*, 287 Ark. 239, 698 S.W.2d 497 (1985).



**7-5-406. Members of uniformed services and other citizens residing outside the United States.**

(a) Any qualified elector of this state in any of the following categories who is absent from the place of his or her voting residence may make a request for an absentee ballot by submission of a federal postal card application as provided for in the Uniformed and Overseas Citizens Absentee Voting Act and may vote without prior registration by regular absentee ballot or by Federal Write-in Absentee Ballot in any election held in his or her election precinct if he or she is otherwise eligible to vote in that election:

(1) Members of the uniformed services of the United States while in active duty or service, and their spouses and dependents who, by reason of the active duty or service of the member, are absent from the place of residence where the spouses or dependents are otherwise qualified to vote;

(2) Members of the Merchant Marine while in active duty or service and their spouses and dependents who, by reason of the active duty or service of the member, are absent from the place of residence where the spouses or dependents are otherwise qualified to vote; and

(3) Citizens of the United States residing or temporarily outside the territorial limits of the United States and the District of Columbia.

(b)(1) The ballot or ballots shall be transmitted according to state and federal laws, rules, and regulations.

(2) The Secretary of State shall establish and transmit to each county clerk and each county board of election commissioners procedures in accordance with state and federal law that:

(A) Allow absent uniformed services voters and absent overseas voters to request, either by mail or electronically, voter registration applications and absentee ballot applications for all elections in the state;

(B) Allow county clerks to send by mail or electronically, in accordance with the preferred method of transmission designated by the absent uniformed services voter or absent overseas voter, voter registration applications and absentee ballot applications;

(C) Allow the absent uniformed services voter or absent overseas voter to designate whether the voter prefers that the voter registration application or absentee ballot application be transmitted by mail or electronically;

(D) Allow the transmission by mail and, to the extent funding is available, electronically of blank absentee ballots to absent uniformed services voters and absent overseas voters for all elections in the state in a manner that expedites the transmission of absentee ballots;

(E) Allow county clerks and county boards of election commissioners to accept and process marked absentee ballots of absent uniformed services voters and absent overseas voters;

(F) Ensure, to the extent practicable, the protection of the security and integrity of the voter registration and absentee ballot request

process and the privacy of the identity and other personal data of an absent uniformed services voter or absent overseas voter who requests or is sent a voter registration application, absentee ballot application, or absentee ballot throughout the process of making a request or being sent an application or ballot; and

(G) Establish, to the extent funding is available, a free access system by which an absent uniformed services voter or absent overseas voter may determine whether the absentee ballot of the absent uniformed services voter or overseas voter has been received by the appropriate election official.

(3) The Secretary of State shall:

(A) Provide each county clerk and each county board of election commissioners with written copies of the procedures under subdivision (b)(2) of this section by February 1 of each even-numbered year; and

(B) Promptly notify each county clerk and each county board of election commissioners of changes in relevant laws, rules, regulations, or procedures.

(4) Notwithstanding any other provisions in this title, if selected by any grantor, this state or any county in this state may participate in a Federal Voting Assistance Program project which allows members of the uniformed services and voters overseas to register to vote and to vote in elections electronically, according to state and federal laws, rules, and regulations, if funds are available.

(c)(1)(A) Except as provided in subdivision (c)(1)(B) of this section, for the qualified electors in the categories named in subsection (a) of this section who are temporarily outside the territorial limits of the United States, the county board of election commissioners shall prepare a special absentee ballot for each preferential primary and general election to be sent to the voter in addition to the regular absentee ballot.

(B) The county board of election commissioners shall not prepare a special absentee ballot for a nonpartisan judicial election.

(2)(A) The special absentee ballot shall contain a list of all offices contested by three (3) or more candidates and the candidates qualifying for the election in each office.

(B) The special absentee ballot shall permit the elector to vote in the general primary election or in a general runoff election by indicating his or her order of preference for each candidate for each office.

(C)(i) To indicate his or her order of preference for each candidate for each office, the voter shall put the number one (1) next to the name of the candidate who is the voter's first choice, the number two (2) for the voter's second choice, and so forth, so that, in consecutive numerical order, a number indicating the voter's preference is written by the voter next to the candidate's name on the ballot.

(ii) However, the voter shall not be required to indicate his or her preference for more than one (1) candidate on the ballot if he or she chooses.

(3) The special absentee ballot shall be marked as a “special runoff ballot”.

(4) Instructions shall be sent with the special absentee ballot to the voter explaining the special runoff voting process.

**History.** Acts 1969, No. 465, Art. 9, §§ 5, 7, 8; 1971, No. 184, § 2; 1971, No. 261, §§ 25, 26; 1977, No. 739, § 1; 1983, No. 430, §§ 2, 4; 1985, No. 1019, § 2; A.S.A. 1947, §§ 3-905, 3-907, 3-908; Acts 1997, No. 1092, § 3; 2001, No. 1180, § 1; 2003, No. 107, § 1; 2003, No. 749, § 1; 2003, No. 994, § 9; 2005, No. 751, § 1; 2007, No. 233, § 1; 2007, No. 261, § 1; 2007, No. 556, §§ 5, 6; 2009, No. 250, §§ 7, 8; 2009, No. 659, § 6; 2009, No. 703, § 1; 2011, No. 1188, § 3.

**Amendments.** The 2007 amendment by No. 233 substituted “contested by three (3) or more candidates” for “being contested” in (c)(2)(A).

The 2007 amendment by No. 261 substituted “temporarily residing outside the territorial limits of the United States” for “active duty military personnel stationed overseas” in (c)(1).

The 2007 amendment by No. 556 substituted “and other” for “and merchant marine and” in the section heading; in (a)(1), deleted “while” following “States” and deleted “and their spouses and dependents” following “service”; deleted former (a)(2) and redesignated former (a)(3) as present (a)(2); deleted “and the District of Columbia and their spouses and dependents when residing with or accompanying them” following the second occurrence of “States” in (a)(2); and made a related change.

The 2009 amendment by No. 250 substituted “armed” for “uniformed” in (a)(1); and deleted “qualified” preceding “voter” in (c)(4).

The 2009 amendment by No. 659 substituted “and may vote without prior reg-

istration by regular absentee ballot or by federal Write-in Absentee Ballot in any election” for “or may use the federal Write-in Absentee ballot and may vote by absentee ballot, without registering, in any primary, special, runoff or general election” in the introductory language of (a); inserted “and their spouses and dependents who, by reason of the active duty or service of the member, are absent from the place of residence where the spouse or dependent is otherwise qualified to vote” in (a)(1); inserted (a)(2) and redesignated the subsequent subdivision accordingly; substituted “residing or temporarily outside” for “temporarily residing outside” in (a)(3); and made related and minor stylistic changes.

The 2009 amendment by No. 703 deleted “residing” following “citizens” in the introductory language of (c); inserted (c)(1)(B); inserted “Except as provided in subdivision (c)(1)(B) of this section” in (c)(1)(A); and made related changes.

The 2011 amendment substituted “state and federal laws, rules, and regulations” for “federal regulations” in the introductory language of (b)(1) and in (b)(4); rewrote the introductory language of (b)(2) and inserted (b)(2)(A) through (b)(2)(G) and (b)(3); in (b)(4), substituted “any grantor” for “the United States Department of Defense” and substituted “a Federal Voting Assistance Program project” for “the Federal Voting Assistance Program’s pilot project”; and substituted “special” for “instant” in (c)(4).

**U.S. Code.** The Uniformed and Overseas Citizen Absentee Voting Act, referred to in (a), is codified at 42 U.S.C.S. § 1973ff.

## RESEARCH REFERENCES

**Ark. L. Notes.** Cihak, 2007 Election Law Issues, Legislation and Reforms, 2007 Ark. L. Notes 1.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General As-

sembly, Election Law, Help America Vote Act, 26 U. Ark. Little Rock L. Rev. 398.

Survey of Legislation, 2005 Arkansas General Assembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.



CASE NOTES

ANALYSIS

Reason for Absence.  
Strict Compliance Required.

**Reason for Absence.**

Failure of elector to state in his application for absentee ballot the reason for his being absent disqualified him from voting by absentee ballot. *Roach v. Kirk*, 228 Ark. 958, 311 S.W.2d 525 (1958) (decision under prior law).

**Strict Compliance Required.**

The provisions of law relating to the duties of voters in applying for, and casting, absentee ballots, must be strictly complied with. *Bingamin v. Eureka Springs*, 241 Ark. 477, 408 S.W.2d 607 (1966) (decision under prior law).

**Cited:** *Forrest v. Baker*, 287 Ark. 239, 698 S.W.2d 497 (1985).

**7-5-407. Preparation and delivery of ballots.**

(a)(1) The county board of election commissioners shall prepare official absentee ballots and deliver them to the county clerk for mailing to all qualified applicants as soon as practicable but in any event not later than forty-seven (47) days before a preferential primary, general election, school election, nonpartisan judicial general election, nonpartisan judicial runoff election, or any special election.

(2) Upon the receipt of the absentee ballots, the county clerk shall begin delivering ballots to absentee voters as soon as practicable and, no later than forty-six (46) days before the applicable election, shall deliver ballots to those absentee voters who made timely application under:

(A) Section 7-5-406; or

(B) 42 U.S.C. § 1973ff, et seq., as existing on January 1, 2011.

(b) The county board shall prepare official absentee ballots and deliver them to the county clerk for mailing to any qualified applicant as soon as practicable but in any event not later than ten (10) days before all other elections not included in subsection (a).

**History.** Acts 1969, No. 465, Art. 9, § 2; 1971, No. 261, § 28; A.S.A. 1947, § 3-902; Acts 1997, No. 1092, § 4; 1999, No. 649, § 1; 2001, No. 1789, § 10; 2007, No. 1049, § 17; 2011, No. 1185, § 7.

**Amendments.** The 2007 amendment substituted “thirty-five (35)” for “twenty-five (25)” in (a).

The 2011 amendment substituted “forty-seven (47)” for “thirty-five (35)” in (a)(1); and inserted (a)(2).

**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.

RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Election Law, 24 U. Ark. Little Rock L. Rev. 465.

CASE NOTES

**Mandamus.**

Where the county clerk was unable to fully perform his statutory duty until the

county election commissioners prepared and furnished him the requested absentee ballots, the county clerk had the legal

right and standing to seek and secure a writ of mandamus to compel the commissioners to supply the absentee ballots required by law. *Swiderski v. Goggins*, 257 Ark. 228, 515 S.W.2d 644 (1974).

**Cited:** *Swanberg v. Tart*, 300 Ark. 304,

778 S.W.2d 931 (1989); *Donn v. McCuen*, 303 Ark. 415, 797 S.W.2d 455 (1990); *Lewis v. West*, 318 Ark. 237, 884 S.W.2d 604 (1994); *Mertz v. States*, 318 Ark. 239, 884 S.W.2d 264 (1994).

### **7-5-408. List of applications — Preparation, preservation, and inspection.**

(a) The county clerk shall make a list of the applications for absentee ballots as the applications are received and shall keep the list of applications and retain the application forms after the election in which they are to be used for the same period as is required for retaining ballots.

(b) The list and applications shall be available to public inspection during regular business hours from sixty (60) days prior to the election until they are destroyed.

**History.** Acts 1969, No. 465, Art. 9, § 6; 1985, No. 568, § 5; A.S.A. 1947, § 3-906; 1983, No. 430, § 3; 1985, No. 567, § 5; Acts 1997, No. 1092, § 5.

### **RESEARCH REFERENCES**

**Ark. L. Rev.** *Watkins*, Access to Public Records under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

### **CASE NOTES**

#### **Public Records.**

Lists of applications for absentee ballots were public records subject to inspection

and copying. *Gaspard v. Whorton*, 239 Ark. 849, 394 S.W.2d 621 (1965) (decision under prior law).

### **7-5-409. Materials furnished to qualified voters.**

(a)(1)(A) The county clerk must satisfy himself or herself that the applicant for an absentee ballot is a qualified registered elector in the ward, precinct, or township in which he or she claims to be a resident or that the applicant is exempted from registration under § 7-5-406.

(B) The county clerk shall verify that the application has been properly signed by the applicant and, if necessary, the designated bearer, administrator, or authorized agent. If the application is not properly signed, the application shall be rejected by the county clerk.

(C) The county clerk shall notify the applicant of the reason for the rejection.

(2) If the county clerk is unable to contact the applicant to cure the deficiency, the county clerk shall forward the application with the reason for the rejection to the county board of election commissioners. The county board of election commissioners shall determine whether the applicant is a qualified elector.

(b) If the applicant is registered or is otherwise eligible to vote absentee, the county clerk, prior to mailing or delivering the ballot, shall detach the ballot stub and deposit the ballot stub into a sealed box designated as “Absentee Stub Box” and deliver to the applicant or to the applicant’s designated bearer, authorized agent, or administrator for delivery to the applicant the following materials:

(1) An official absentee ballot for each election named in the application;

(2) Instructions for voting and returning the official absentee ballot to the county clerk;

(3) An official absentee ballot secrecy envelope on which there shall be written or printed the words “Ballot Only”;

(4)(A)(i) A voter statement.

(ii) The voter statement shall include the following heading in bold capitalized letters: **“THIS VOTER STATEMENT MUST BE COMPLETED AND RETURNED IN THE MAILING ENVELOPE OR THE ABSENTEE BALLOT WILL NOT BE COUNTED.”**

(iii) The voter statement shall include the following statement in bold capitalized letters at the bottom of the page: **“THE INFORMATION I HAVE PROVIDED IS TRUE TO THE BEST OF MY KNOWLEDGE UNDER PENALTY OF PERJURY. IF I HAVE PROVIDED FALSE INFORMATION, I MAY BE SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR UP TO TEN (10) YEARS, OR BOTH, UNDER FEDERAL OR STATE LAWS.”**

(iv) The voter statement shall include a statement that the voter resides at the address on his or her application.

(v) The voter statement shall include a statement for a first-time voter who registers by mail: “If I am a newly registered voter of this county and this is the first time I am voting in this county, I am enclosing a copy of a current and valid photo identification card or a current utility bill, bank statement, government check, paycheck, or other government document that shows my name and address.”

(B) Blanks shall be provided for the voter to provide his or her printed name, signature, address, date of birth, signature of administrator, authorized agent, or designated bearer, and address of the administrator, authorized agent, or designated bearer;

(5) A sealable envelope upon which shall be printed or written the words: “Return Envelope”, the address of the county clerk, the precinct of the voter, and the words: “ABSENTEE BALLOT, ....., ELECTION”; and

(6) An authorized agent authorization form, as follows:

**“AGENT AUTHORIZATION FORM**

If applicable, fill out and sign this form and place it in the Return Envelope

I hereby authorize .....(insert his or her name) as my authorized agent, to deliver this ballot as I am medically unable to vote



on election day. An affidavit verifying my medical status as unable to deliver the application or to vote on the day of the election is attached or has been provided with my application.

.....  
signature of voter  
.....  
printed name of voter  
.....  
address of voter  
.....  
date of birth of voter”

(c)(1) Except for absentee ballots mailed to an address outside the county in which the applicant is registered, an absentee ballot shall be mailed to the address that appears on the applicant’s registration record or absentee ballot application if the voter is temporarily at a different address.

(2) The county clerk shall not mail more than two (2) absentee ballots to the same address unless:

- (A) The address is outside the territorial limits of the United States;
- (B) The address is for a long-term care or residential care facility licensed by the state; or
- (C) There are more than two (2) persons lawfully registered at the same address.

(d) The county clerk shall not deliver an absentee ballot to any person other than the absentee voter unless the person picking up the ballot provides current and valid photographic identification to the county clerk that he or she is:

- (1) The voter’s:
  - (A) Designated bearer; or
  - (B) Authorized agent; or

(2) The administrator of a long-term care or residential care facility licensed by the state in which the voter resides.

(e) The county clerk shall not provide more than two (2) absentee ballots per election to any designated bearer or authorized agent, nor shall the county clerk accept delivery of more than two (2) absentee ballots per election from any designated bearer or authorized agent.

(f) A designated bearer shall be allowed to pick up only two (2) absentee ballots from the county clerk only during the fifteen (15) days prior to a school election, special election, preferential primary election, or general election and seven (7) days prior to a runoff election, including a general primary election.

(g) Upon delivery of an absentee ballot to an individual authorized to receive an absentee ballot, the county clerk shall mark the precinct voter registration list to indicate that an absentee ballot has been delivered to the voter.

**History.** Acts 1969, No. 465, Art. 9, § 7; 1971, No. 261, § 25; 1983, No. 430, § 4; 1985, No. 567, § 3; 1985, No. 568, § 3; A.S.A. 1947, § 3-907; Acts 1987, No. 843, § 3; 1989, No. 912, § 8; 1993, No. 1201, § 3; 1995, No. 103, § 1; 1997, No. 1092, § 6; 1999, No. 918, § 2; 1999, No. 1243, §§ 1, 2; 1999, No. 1344, § 1; 1999, No. 1538, § 1; 2001, No. 1379, § 1; 2003, No. 647, § 1; 2003, No. 994, § 10; 2003, No. 1202, § 2; 2003, No. 1275, §§ 2, 3; 2005, No. 880, § 4; 2005, No. 2193, § 3; 2007, No. 543, § 4; 2007, No. 556, § 7; 2009, No. 26, § 2; 2009, No. 250, §§ 9, 10; 2009, No. 375, § 2.

**A.C.R.C. Notes.** The amendment of subdivision (b)(5) of this section by Acts 2003, No. 647, conflicted with the amendments to the subdivision by Acts 2003, Nos. 994, 1202, and 1275. Consequently, pursuant to § 1-2-207, the amendment was not implemented.

Acts 2003, No. 647 amended (b)(5) to read as follows:

“A blank voter statement in the following form:

“I reside at the address indicate on my application.

“I have enclosed my ballot stub and my marked ballot in the envelope. I will not vote again in this election.

“THE INFORMATION I HAVE PROVIDED IS TRUE TO THE BEST OF MY KNOWLEDGE UNDER PENALTY OF PERJURY. IF I HAVE PROVIDED FALSE INFORMATION, I MAY BE SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR UP TO TEN (10) YEARS, OR BOTH, UNDER FEDERAL OR STATE LAWS.

“.....  
“signature of voter

“.....  
“printed name of voter

“.....  
“address of voter

“.....  
“date of birth of voter

“.....

“signature of designated bearer, relative or authorized agent

“.....

“address of designated bearer, relative or authorized agent; and”

**Amendments.** The 2007 amendment by No. 543 substituted “the voter’s designated bearer, authorized agent, or the administrator of a long-term care or residential care facility licensed by the state” for “the person authorized by the absentee voter to pick up the ballots” in (d); deleted former (e) and (g) and redesignated the remaining subsections accordingly; inserted “or authorized agent” twice in present (e); and rewrote present (f).

The 2007 amendment by No. 556 substituted “or to the applicant’s designated bearer, authorized agent, or administrator for delivery to the applicant” for “or deliver pursuant to subsections (d)-(f) of this section to the person who delivers the application to the office of the county clerk pursuant to § 7-5-403” in (b); rewrote (b)(4)(A); deleted “and the District of Columbia” following “States” in (c)(2)(A); in (h), inserted “school election, special election” and “primary election” and substituted “a runoff election, including a general primary election” for “a general primary election”; and substituted “that an absentee ballot has been delivered to the voter” for “that the individual has received an absentee ballot” in (i).

The 2009 amendment by No. 26, in (f), deleted “presidential preferential primary election” preceding “or general election,” and made a minor punctuation change.

The 2009 amendment by No. 250, in the introductory language of (d), substituted “current and valid photographic” for “satisfactory photo,” redesignated the last phrase as (d)(1) and (d)(2), and made related and minor stylistic changes.

The 2009 amendment by No. 375 deleted “presidential preferential primary election” following “preferential primary election” in (f), and made a related change.

## RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Election Law, Help America Vote Act, 26 U. Ark. Little Rock L. Rev. 398.

## CASE NOTES

**Election Contest.**

Circuit court abused its discretion in ruling that the claimant was attempting to amend his complaint with a new cause of action by offering proof of absentee-ballot irregularities under the miscellaneous other category in the claimant's exhibit, because the claimant was perfectly within his rights to make his allegations of absentee-ballot irregularities for nursing home residents, in particular,

more definite and certain by offering proof of those violations. The claimant alleged a valid cause of action and set out a prima facie case with sufficient facts to give reasonable information as to the grounds of the contest, and he proffered absentee applications and voter statements to show why and how the ballots were illegal. *Willis v. Crumbly*, 371 Ark. 517, 268 S.W.3d 288 (2007).

### **7-5-410. Instructions and notice included with voting materials — Other enclosures prohibited.**

It shall be unlawful for any person to place any notice, advertising material, or other advice with the material delivered or mailed to the applicant, other than instructions as to the method of casting an absentee ballot including a procedure to be followed by absentee voters such as express information covering the type or types of writing instruments which may be used to mark the absentee ballot, preferably pen or indelible pencil, the consequences of voting for more than one (1) candidate for a particular office, and notice of the last day on which the ballot may be received and counted. The instructions and notice shall not be signed by the name of any person.

**History.** Acts 1969, No. 465, Art. 9, § 9; 1971, No. 261, § 27; A.S.A. 1947, § 3-909; Acts 2009, No. 959, § 17.

**Amendments.** The 2009 amendment deleted "in instances of adhesion of the balloting materials, a notation of the fact

on the back of the envelope duly signed by the voter and witnessing officer" following "such as," inserted "the consequences of voting for more than one (1) candidate for a particular office," and made related changes.

### **7-5-411. Methods of voting absentee.**

(a) Absentee voting may be accomplished in one (1) of the following methods and in no other manner:

(1)(A) By delivery of the ballot by mail that must be received in the office of the county clerk of the county of residence of the voter not later than 7:30 p.m. on election day.

(B)(i) However, except as provided in subdivision (a)(1)(B)(ii) of this section, by ballots applied for not later than thirty (30) days before the election by qualified electors outside the United States on election day that are signed, dated, postmarked, and mailed by the voters no later than the day of the election and received by the county clerk no later than 5:00 p.m. ten (10) calendar days after the date of the election.

(ii) The absentee ballots of armed services personnel serving in active status shall be counted if received by the county clerk no later than 5:00 p.m. ten (10) calendar days after the date of the election



and if the absentee ballots were executed no later than the date of the election.

(C) Each absentee ballot shall be mailed separately by the voter and shall not be included with any other absentee ballot in a bulk mailing, except that an administrator of a long-term care or residential care facility licensed by the State of Arkansas or hospital may mail the absentee ballots of the residents and patients by bulk mail. Absentee ballots in any bulk mailing not otherwise permitted in this subsection shall not be counted;

(2) By delivery of the ballot to the county clerk of the county of residence of the voter not later than 7:30 p.m. on election day by the designated bearer, administrator, or the authorized agent of the absentee voter who is medically unable to vote at the regular polling site, upon proper verification of the signature of the voter by the county clerk and validation of the identity of the authorized agent; or

(3) The voter may deliver the ballot to the county clerk of the county of his or her residence not later than the close of regular business hours on the day before the election.

(b) Any person to whom an absentee ballot is delivered according to the precinct voter registration list but who elects to vote by early voting or to vote at his or her polling site on election day shall be permitted to cast a provisional ballot.

**History.** Acts 1969, No. 465, Art. 9, § 10; 1970 (Ex. Sess.), No. 28, § 1; 1981, No. 685, § 2; 1983, No. 430, § 5; 1985, No. 567, § 4; 1985, No. 568, § 4; 1985, No. 612, § 2; 1985, No. 1024, § 1; A.S.A. 1947, § 3-910; Acts 1987, No. 843, § 4; 1989, No. 912, § 9; 1997, No. 1092, § 7; 1999, No. 491, § 1; 1999, No. 1538, § 4; 1999, No. 1586, § 1; 2001, No. 1257, § 1; 2001, No. 1767, § 1; 2003, No. 273, § 1; 2003, No. 1275, § 4; 2005, No. 2193, § 4; 2007, No. 543, § 5; 2007, No. 556, § 8; 2009, No. 250, §§ 11, 12.

**Amendments.** The 2007 amendment by No. 543 deleted the (a)(2)(A) designation; deleted “upon proper verification of the signature of the voter by the county clerk and validation of the identity of the authorized agent” following “site” in

(a)(2); deleted former (a)(2)(B); deleted former (b); and redesignated former (c) as present (b).

The 2007 amendment by No. 556 substituted “delivery of the ballot” for “ballot cast” in (a)(1)(A); substituted “by a qualified elector” for “by qualified electors” in (a)(1)(B)(i); substituted “The absentee ballot” for “Absentee ballots” in (a)(1)(B)(ii); substituted “residential care facility licensed by the State of Arkansas” for “residential facility” in (a)(1)(C); and substituted “to whom an absentee ballot is delivered” for “who receives an absentee ballot” in (c).

The 2009 amendment substituted “armed” for “uniformed” in (a)(1)(B)(ii); and substituted “administrator” for “administrative head” in (a)(1)(C).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Election Law, 24 U. Ark. Little Rock L. Rev. 465.

## CASE NOTES

## ANALYSIS

Election Contest.

Noncompliance.

Strict Compliance Required.

**Election Contest.**

Circuit court abused its discretion in ruling that the claimant was attempting to amend his complaint with a new cause of action by offering proof of absentee-ballot irregularities under the miscellaneous other category in the claimant's exhibit, because the claimant was perfectly within his rights to make his allegations of absentee-ballot irregularities for nursing home residents, in particular, more definite and certain by offering proof of those violations. The claimant alleged a valid cause of action and set out a prima facie case with sufficient facts to give

reasonable information as to the grounds of the contest, and he proffered absentee applications and voter statements to show why and how the ballots were illegal. *Willis v. Crumbly*, 371 Ark. 517, 268 S.W.3d 288 (2007).

**Noncompliance.**

Evidence established noncompliance with methods of absentee voting prescribed by law. *Roach v. Kirk*, 228 Ark. 958, 311 S.W.2d 525 (1958) (decision under prior law).

**Strict Compliance Required.**

The provisions of law relating to the duties of voters in applying for, and casting, absentee ballots, must be strictly complied with. *Bingamin v. Eureka Springs*, 241 Ark. 477, 408 S.W.2d 607 (1966) (decision under prior law).

**7-5-412. Marking and return of absentee ballots — Delivery of mailed absentee ballots.**

(a) Upon receiving the blank absentee ballot, statement, and envelopes, whether in the office of the county clerk or elsewhere, the voter shall mark the absentee ballot and place the absentee ballot in the provided envelope. He or she shall then seal the envelope containing the absentee ballot and place it in the other provided outer envelope with the following:

- (1) The executed voter statement; and
- (2) A copy of a current and valid photographic identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the first-time voter, for first-time voters who registered by mail. However, this requirement does not apply if:

(A) The voter registered to vote by mail and provided the identification at that time; or

(B) The first-time voter registered to vote by mail and submitted his or her driver's license number or at least the last four (4) digits of his or her social security number at the time and this information matches the information in an existing state identification record bearing the same number, name, and date of birth as provided in the registration.

(b) A voter who desires to cast an absentee ballot but who does not meet the identification requirements of subdivision (a)(2) of this section may cast his or her absentee ballot by mail, and the absentee ballot shall be considered as a provisional ballot.

(c) Absentee ballots received by mail on election day before the polls close shall be delivered promptly by the county clerk to the election officials designated to canvass and count absentee ballots.

**History.** Acts 1969, No. 465, Art. 9, § 11; 1970 (Ex. Sess.), No. 28, § 2; A.S.A. 1947, § 3-911; Acts 1997, No. 1092, § 8; 2003, No. 647, § 2; 2003, No. 994, § 11; 2005, No. 880, § 5; 2007, No. 556, § 9; 2009, No. 250, § 13.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, subsection (a) of this section is set out above as amended by Acts 2003, No. 994. Subsection (a) of this section was also amended by Acts 2003, No. 647 to read as follows:

“(a) Upon receiving the blank ballot, statement, and envelopes, whether in the office of the county clerk or elsewhere, the voter shall mark the ballot, tear off the

lower ballot stub end, and place the ballot in the provided envelope. He or she shall place the ballot, the executed statement, and the ballot stub in the provided envelope.”

**Amendments.** The 2007 amendment deleted former (b) and redesignated the remaining subsections accordingly; substituted “his or her ballot” for “a ballot” in present (b); and deleted “Ballots by mail shall be counted if received no later than the time the polls close on election day” at the beginning of (c).

The 2009 amendment inserted “absentee” preceding “ballot” in seven places; and made minor stylistic changes.

## RESEARCH REFERENCES

**Ark. L. Notes.** Cihak, 2007 Election Law Issues, Legislation and Reforms, 2007 Ark. L. Notes 1.

**U. Ark. Little Rock L. Rev.** Survey of

Legislation, 2003 Arkansas General Assembly, Election Law, Help America Vote Act, 26 U. Ark. Little Rock L. Rev. 398.

## 7-5-413. Voting machines — Related duties.

(a)(1) At least one (1) voting machine equipped for use by individuals with disabilities shall be placed in the county clerk’s designated location for early\* voting for the election in accordance with this subchapter and at any off-site polling locations established by the county board.

(2) Those persons entitled under the law to vote early by personal appearance shall cast their votes on voting systems under the laws applicable to early voting, and the clerk or election official shall enter the name of each voter on a list at the time he or she votes.

(b) After regular business hours, the clerk at the clerk’s designated early voting location or the election official at any off-site polling place shall secure the machines against further voting at the close of each day’s voting in the presence of authorized poll watchers, if any. When early voting is concluded, the clerk or the election official shall secure the machines against further voting.

(c)(1) At the time designated in the notice of election, a set of election officials for the machines used for early voting shall canvass the vote in the manner provided for regular polling sites. After the canvass has been made, the machines shall be secured and shall remain inaccessible to voting.

(2) The results of the canvass shall be returned to the county board of election commissioners to be tabulated and canvassed with and in the same manner as the returns of other election precincts.



(d) Any candidate or political party may be present in person or by a representative designated in writing during the progress of early voting and at the canvass of the results in any election for the purpose of determining whether or not the votes in any election are fairly and accurately cast and counted.

**History.** Acts 1969, No. 465, Art. 9, § 16; 1970 (Ex. Sess.), No. 6, § 1; 1985, No. 567, § 6; 1985, No. 568, § 6; A.S.A. 1947, § 3-916; Acts 1995, No. 686, § 6; 1995, No. 948, § 6; 1997, No. 1092, § 9; 2005, No. 2233, § 8; 2007, No. 556, § 10; 2007, No. 1020, § 12.

**A.C.R.C. Notes.** Acts 2007, Nos. 556 and 1020 both amended (c)(1). The Arkansas Code Revision Commission implemented the amendment by Acts 2007, No. 1020 since there was an irreconcilable conflict between the two acts.

Acts 2007, No. 556, § 10 provided: “(c)(1) At the time designated by law for the closing of the polls on election day or

at the time designated for counting absentee and early voting ballots in the notice provided for in the public notice of election, a set of election officials for the machines used for early voting shall canvass the vote in the manner provided for regular polling sites. After the canvass has been made, the machines shall be secured and shall remain inaccessible to voting.”

**Amendments.** The 2007 amendment by No. 556 inserted “or at the time designated for counting absentee and early voting ballots in the notice provided for in the public notice of election” in (c)(1).

#### **7-5-414. Appointment of election clerks — Qualifications.**

(a) The county board of election commissioners shall appoint election clerks to process, count, and canvass the absentee voters’ ballots in all elections.

(b)(1) The election clerks who are to canvass the absentee ballots shall be appointed in the same manner and at the same time the poll workers are selected to serve at the regular voting precincts.

(2) The election clerks shall possess the same qualifications as the poll workers who serve at the regular voting precincts.

(c) The processing, counting, and canvassing of the absentee ballots shall be under the supervision and at the direction of the county board of election commissioners.

**History.** Acts 1969, No. 465, Art. 9, § 12; A.S.A. 1947, § 3-912; Acts 1997, No. 1092, § 10; 2005, No. 1827, § 5; 2007, No. 556, § 11; 2009, No. 959, § 18.

**Amendments.** The 2007 amendment added the (b)(1) and (b)(2) designations; and deleted “and have the same powers and duties” following “qualifications” in (b)(2).

The 2009 amendment substituted “election clerks” for “election officials” in three places; substituted “poll workers” for “election officials” in two places; inserted “process” in (a) and made related changes; and added (c).

#### **7-5-415. Compensation of county clerk for extra deputy.**

The county clerk’s budget shall be paid not less than minimum wage for a period not to exceed thirty-five (35) days for hiring one (1) extra deputy for the purpose of carrying out the requirements of this act. The fee for this one (1) extra deputy shall be established and paid by the county, city, or other political subdivision, the representatives of which

call the election, or in the case of a state-funded election, by the State Board of Election Commissioners. Any additional deputies beyond the one (1) extra deputy may be hired as necessary to carry out the purposes of early voting and absentee voting, if approved and paid by the quorum court of the county. In the regular general election, the fee for the one (1) extra deputy or additional deputies shall be paid by the county.

**History.** Acts 1969, No. 465, Art. 9, § 15; A.S.A. 1947, § 3-915; Acts 1991, No. 482, § 1; 1997, No. 1092, § 11; 2007, No. 556, § 12.

**Amendments.** The 2007 amendment substituted “thirty-five (35) days” for “twenty (20) days” and substituted “state-funded election” for “primary.”

**Meaning of “this act”.** Acts 1969, No. 465, codified as §§ 7-1-101, 7-1-103 — 7-1-105, 7-3-101 — 7-3-108, 7-4-101 — 7-4-105, 7-4-107 — 7-4-112, 7-5-101, 7-5-102, 7-5-103 [repealed], 7-5-202 — 7-5-209, 7-5-210 [repealed], 7-5-211, 7-5-301, 7-5-302 [repealed], 7-5-303 [repealed], 7-5-304 — 7-5-306, 7-5-307 [repealed],

7-5-308, 7-5-309, 7-5-312 [repealed], 7-5-313 [repealed], 7-5-314 — 7-5-319, 7-5-401 — 7-5-403, 7-5-405 — 7-5-417, 7-5-501 [repealed], 7-5-502 — 7-5-504, 7-5-505 [repealed], 7-5-506 [repealed], 7-5-507, 7-5-508 [repealed], 7-5-509, 7-5-511 [repealed], 7-5-512, 7-5-513, 7-5-514 [repealed], 7-5-515 — 7-5-518, 7-5-519 [repealed], 7-5-520 — 7-5-522, 7-5-524 — 7-5-531, 7-5-701 — 7-5-706, 7-5-801 — 7-5-809, 7-6-101 — 7-6-105, 7-7-101 — 7-7-105, 7-7-201 — 7-7-203, 7-7-301 — 7-7-307, 7-7-309, 7-7-310 [repealed], 7-7-401, 7-7-402, 7-7-403 [repealed], 7-8-101 — 7-8-104, 7-8-301, 7-8-302, 7-8-304 — 7-8-307, 25-16-801.

### CASE NOTES

**Cited:** Republican Party v. Faulkner County, 49 F.3d 1289 (8th Cir. 1995).

### 7-5-416. Counting of absentee ballots.

(a)(1) The election officials for absentee ballots shall meet in the courthouse in a place designated by the county board of election commissioners on election day for the purpose of processing absentee ballots.

(2) The county board shall give public notice of the time and location of the opening, processing, canvassing, and counting of absentee ballots and early voting ballots as provided in § 7-5-202.

(3) The county clerk shall forward the absentee ballot applications sorted alphabetically or by precinct to the election officials for absentee ballots.

(4) The counting of absentee ballots shall be open to the public, and candidates and political parties may be present in person or by a representative designated in writing pursuant to § 7-5-312 during the opening, processing, canvassing, and counting of the absentee ballots as provided in this subchapter.

(5) Absentee or early votes may be counted prior to the closing of the polls on election day.

(b)(1) The opening, processing, counting, and canvassing of absentee ballots shall be conducted as follows:

(A) One (1) of the election officials shall open outer absentee ballot envelopes one (1) by one (1) and verify the contents;

(B) If the required materials are properly placed in the outer absentee ballot envelope, the election official shall proceed to read aloud from the voter statement the name of the voter;

(C) If the required materials are not properly placed in the outer absentee ballot envelope, a second election official shall open the inner absentee ballot envelope to verify the contents;

(D) If all required materials are present within one (1) or the other envelopes, the election officials shall put the materials in the proper envelopes while preserving the secrecy of the voter's ballot and shall proceed to read aloud from the voter statement the name of the voter and the voting precinct in which the voter claims to be a legal voter;

(E) As each outer envelope is opened and the name of the voter is read, the election officials for the absentee box shall list in duplicate the name and voting precinct of the voter;

(F)(i) After the election official reads aloud from the statement, the election officials shall compare the name, address, date of birth, and signature of the voter's absentee application with the voter's statement and, for first-time voters who registered by mail, the first-time voter's identification document unless the voter previously provided identification at the time of mailing the voter registration application.

(ii) If the county board of election commissioners determines that the application and the voter's statement do not compare as to name, address, date of birth, and signature, the absentee ballot shall not be counted.

(iii) If a first-time voter fails to provide the required identification with the absentee ballot or at the time of mailing the voter registration application, then the absentee application, absentee ballot envelope, and voter's statement shall be placed in an envelope marked "provisional" and the absentee ballot shall be considered a provisional ballot;

(G) If the absentee voter fails to return the voter statement, the vote shall not be counted;

(H) Failure of the voter to submit the required absentee materials in the proper envelopes shall not be grounds for disqualifying the voter;

(I) If no challenge is made by a qualified poll watcher, the election official shall remove the inner envelope, without opening the inner envelope containing the ballot, and place it in the ballot box without marking it in any way;

(J)(i) After all of the outer envelopes have been opened and a list has been made in duplicate of the name and voting precinct of the voters as required in this section, the election officials of the absentee box shall preserve all the statements of voters and the voters' identification documents and deliver them to the county clerk, who shall file and keep them for the same length of time after the election as is required for retention of other ballots.



(ii) The voter statements shall be made available for public inspection during regular business hours.

(iii) The voters' identification documents shall not be subject to public inspection except as part of a judicial proceeding to contest the election;

(K) When all of the inner envelopes containing the ballots have been placed in the ballot box, the ballot box shall be shaken thoroughly to mix the ballots; and

(L) The ballot box shall be opened and the ballots canvassed and counted.

(2) No election results shall be printed or released prior to the closing of the polls.

(c) If any person casting an absentee ballot dies before the polls open on election day, his or her vote shall not be counted.

(d) It is the intent of this section to permit the election officials for absentee ballots to meet and process, canvass, and count absentee ballots according to this section prior to the closing of the polls on election day.

(e)(1) Absentee votes shall be cast on paper ballots.

(2)(A) The ballots shall first be counted for write-in votes by the election officials.

(B) Then, at the discretion of the county board, the ballots may be either hand counted or counted on an electronic vote tabulating device.

(f)(1) Absentee ballots marked as "special runoff ballots" received from a qualified voter from one (1) of the categories in § 7-5-406(a) and who is temporarily residing outside the territorial limits of the United States shall be opened for general primary elections and general runoff elections according to the procedures described in subsection (b) of this section.

(2) However, in counting the special runoff ballot, one (1) of the election officials shall open the envelope containing the special runoff ballot and read the numbers indicated next to the names of the two (2) candidates in the general primary election or in the general runoff election.

(3) The candidate with the highest ranking shall receive the vote.

(4) A special runoff ballot received with the preferential primary absentee ballot shall be counted in the general primary election, and a special runoff ballot received with the general election absentee ballot shall be counted in the general runoff election.

(5) The Secretary of State shall prepare instructions for opening, counting, and canvassing special runoff ballots and provide the instructions to each county board of election commissioners.

**History.** Acts 1969, No. 465, Art. 9, § 13; 1971, No. 261, § 21; A.S.A. 1947, § 3-913; Acts 1989, No. 505, § 1; 1993, No. 845, §§ 1-3; 1997, No. 1092, § 12; 1999, No. 1368, § 1; 2003, No. 647, §§ 3, 4; 2003, No. 994, § 12; 2003, No. 1154, § 3; 2003, No. 1744, § 1; 2005, No. 138, § 2; 2005, No. 751, § 2; 2005, No. 880,

§ 6; 2007, No. 261, § 2; 2007, No. 556, § 13; 2009, No. 250, § 14; 2009, No. 959, §§ 19, 20.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, this section is set out above as amended by Acts 2003, Nos. 994, 1154, and 1744. Subdivision (b)(1)(B) and subsection (d) of this section were also amended by Acts 2003, No. 647 to read as follows:

“(b)(1)(B) As each envelope is opened and the name of the voter is read, the election officials for the absentee box shall list in duplicate the name and voting precinct of the voter and shall write on the stub end of the ballot taken from the envelope the number of the voter taken from this list of voters;

“(d) It is the intent of this section to permit the election officials for absentee ballots to meet and open the outer envelope and make a list in duplicate of the name and voting precinct of each voter casting an absentee ballot, to write on the stub end of the ballot the number of the voter taken from the list of voters, and to deposit the envelope containing the ballot in the ballot box and to deposit the ballot stub ends in another ballot box prior to the closing of the polls on election day.”

**Amendments.** The 2007 amendment by No. 261 inserted “and is temporarily residing outside the territorial limits of the United States” in (f)(1).

The 2007 amendment by No. 556 inserted “and early voting ballots” in (a)(2); substituted “voter statement, the vote shall not be counted” for “required materials the contents of both envelopes shall be placed in an envelope marked ‘provisional’” in (b)(1)(G); deleted former (b)(1)(H) and redesignated the remaining subsections accordingly; substituted “disqualifying the voter” for “challenging the ballot” in present (b)(1)(H); inserted “by a qualified poll watcher” in present (b)(1)(I); substituted “shall be cast on paper ballots” for “may be cast on paper ballots or ballot cards, or both methods may be used” in (e)(1); added the (e)(2)(A) and (e)(2)(B) designations; substituted “at the discretion of the county board, the ballots may be either hand counted or counted on an electronic vote tabulating device” for “the ballots may be either hand counted or automatically counted on an electronic system, whichever is convenient” in (e)(2)(B); deleted former (e)(3); and substituted “voter from” for “voter who meets” in (f)(1).

The 2009 amendment by No. 250 inserted “absentee” preceding “ballot” twice in (b)(1)(F)(iii).

The 2009 amendment by No. 959 deleted “and the voting precinct in which the voter claims to be a legal voter” at the end of (b)(1)(B); and inserted “the county board of election commissioners determines that” in (b)(1)(F)(ii).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Election Law, Help America Vote Act, 26 U. Ark. Little Rock L. Rev. 398.

Survey of Legislation, 2005 Arkansas General Assembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.

## CASE NOTES

### Mandamus.

Where there was no challenge of an absentee ballot as prescribed by law providing procedure for challenging such ballots, the duties of the election commission-

ers were merely those of a canvassing board and could be enforced by mandamus. *Dotson v. Ritchie*, 211 Ark. 789, 202 S.W.2d 603 (1947) (decision under prior law).

## 7-5-417. Challenge of absentee votes.

(a) When the name and voting precinct of a voter is read by the election official, any candidate or qualified poll watcher pursuant to § 7-5-312 may challenge the vote in the manner provided by law for

personal voting challenges, and the election officials shall consider the ballot as a provisional ballot.

(b) If the statement is not in proper form or for any other legal reason the vote should not be counted, the ballot shall not be counted and shall be preserved together with the statement and envelope for the same period of time that the statements are preserved.

(c) If the county board of election commissioners determines that the provisional voter is qualified and that the vote was properly cast, the vote shall be counted.

**History.** Acts 1969, No. 465, Art. 9, § 14; A.S.A. 1947, § 3-914; Acts 1997, No. 1092, § 13; 2003, No. 1154, § 4; 2005, No. 67, § 13; 2005, No. 880, § 7; 2007, No. 556, § 14.

**Amendments.** The 2007 amendment by No. 261 inserted “and is temporarily residing outside the territorial limits of the United States” in (f)(1).

### CASE NOTES

#### Hearing Required.

The commissioners could not pass upon the legality of a ballot without a hearing and determination of the question since the elector had the right to be heard in

defense of his ballot before he was disenfranchised. *Dotson v. Ritchie*, 211 Ark. 789, 202 S.W.2d 603 (1947) (decision under prior law).

#### 7-5-418. Early voting.

(a)(1)(A) Except as provided in subdivision (a)(1)(B) of this section, early voting shall be available to any qualified elector who applies to the county clerk’s designated early voting location, beginning fifteen (15) days before a preferential primary or general election between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday and 10:00 a.m. and 4:00 p.m. Saturday and ending at 5:00 p.m. on the Monday before the election.

(B) Early voting shall not be available on state or county holidays.

(2) However, on all other elections, including the general primary and general runoff elections, early voting shall be available to any qualified elector who applies to the county clerk during regular office hours, beginning seven (7) days before the election and ending on the day before the election day at the time the county clerk’s office regularly closes.

(b)(1)(A) The county board of election commissioners may decide to hold early voting at additional polling sites outside the offices of the county clerk on any of the days and times provided for in subsection (a) of this section, if it so chooses.

(B) The county board of election commissioners shall determine by unanimous vote the location of additional polling sites for early voting.

(2) The county board of election commissioners shall appoint the election officials for the additional early voting polling site or sites in the same manner as election officials are appointed for election day.



(3)(A) The county board of election commissioners shall notify the county clerk of its decision to hold early voting at additional polling sites outside the office of the county clerk within ten (10) days of the decision.

(B) If the county board of election commissioners decides to hold early voting at one (1) or more conveniently located polling sites on the days and times under subsection (a) of this section, the county clerk may choose not to hold early voting within the office of the county clerk. The county clerk shall notify the county board within ten (10) days of the receipt of notice from the county board of election commissioners regarding early voting at additional polling sites.

(4) The early voting election official shall record the date on all pages of the early voting roster or early voting request form and keep a daily record of the number of early ballots cast.

(5) All voted ballots and unvoted ballots and all related election materials at each additional early voting polling site shall be stored in a secure location in the county courthouse or in a secure location as determined by the county board of election commissioners immediately after the close of the additional polling sites each day that early voting is conducted there.

(c) Before a person is permitted to cast an early vote, the county clerk or election official shall:

(1) Request the voter to identify himself or herself by stating his or her name, date of birth, and address in order to verify his or her registration;

(2) If the voter's name or address is not the same as that in the county voter registration record files, request the voter to complete an updated voter registration application form;

(3) Request the voter to sign an early voting roster or early voting request form that identifies his or her name, address, date of birth, and the date on the roster or form; and

(4) Enter the voter's precinct number on the early voting roster or early voting request form.

(d) If the voter is not listed in the county voter registration record files and the county clerk is unable to verify the voter's registration and if the voter contends that he or she is eligible to vote, then the voter may vote a provisional ballot that shall be counted only upon verification of the voter's registration status.

(e) The county clerk or county board of election commissioners shall furnish voting locations that adequately allow the early voter to personally and secretly execute his or her ballot.

(f) Except as provided in this section, early voting shall be conducted in the same manner as voting on election day. Conduct that is prohibited or restricted on election day shall be subject to the same prohibitions and restrictions on the days on which early voting is conducted.

**History.** Acts 1995, No. 686, § 7; 1995, No. 948, § 7; 1997, No. 967, § 1; 1997, No. 1092, § 14; 2003, No. 269, § 1; 2005, No. 655, § 1; 2005, No. 880, § 8; 2005, No. 1690, § 1; 2007, No. 556, § 15; 2007, No. 987, § 1; 2009, No. 375, § 3; 2009, No. 959, § 21.

**Amendments.** The 2007 amendment by No. 556 inserted “or county” in (a)(1)(B); in (a)(1)(B)(2), substituted “presidential preferential primary” for “but not limited to,” “seven (7)” for “fifteen (15)” and “the election” for “an election,” and made minor punctuation changes; deleted “and to include the additional voting locations for a maximum of fifteen (15) days” following “clerk” in (b)(1)(A); deleted former (b)(1)(C); rewrote (b)(2); substituted “the county board shall hold early voting” for “early voting shall be held” in (b)(3)(B)(ii); deleted former (b)(5) and re-

designated former (b)(6) as present (b)(5); in (c)(1), inserted “or herself” and inserted “or her” twice; inserted “or her” in (c)(3); and deleted former (g) and redesignated former (h) as present (g).

The 2009 amendment by No. 375 deleted “presidential preferential primary” preceding “general primary,” and made related changes in (a)(2).

The 2007 amendment by No. 987 inserted “presidential preferential primary” and made related changes in (a)(2).

The 2009 amendment by No. 959 deleted (b)(3)(B)(ii); substituted “at one (1) or more conveniently located polling sites on the days and times under subsection (a) of this section” for “at additional polling sites outside the office of the county clerk” in (b)(3)(B); deleted (f); and redesignated the remaining subsection accordingly.

## RESEARCH REFERENCES

**ALR.** Validity, Construction, and Application of Early Voting Statutes. 29 A.L.R.6th 343.

**Ark. L. Notes.** Cihak, 2007 Election Law Issues, Legislation and Reforms, 2007 Ark. L. Notes 1.

## 7-5-419. [Transferred.]

**Publisher’s Notes.** Former § 7-5-419 has been renumbered by Acts 2009, No. 959, § 22 as § 7-5-403.

## SUBCHAPTER 5 — VOTING MACHINES

### SECTION.

- 7-5-501. [Repealed.]
- 7-5-502. Application of election laws and penalties.
- 7-5-503. Examination and approval of machines by State Board of Election Commissioners.
- 7-5-504. Machine specifications.
- 7-5-505, 7-5-506. [Repealed.]
- 7-5-507. Demonstration — Assistance in operating machine.
- 7-5-508. [Repealed.]
- 7-5-509. Machines used for demonstration.
- 7-5-510. Forms for complaints about function of voting machine — Investigation.
- 7-5-511. [Repealed.]
- 7-5-512. Certification of ballot styles —

### SECTION.

- Equipment furnished to polling sites.
- 7-5-513. Machine breakdown — Delivery of ballot materials.
- 7-5-514. [Repealed.]
- 7-5-515. Preparation of machines for election.
- 7-5-516. Notice to candidates of preparation — Rules and statutes unaffected.
- 7-5-517. Securing machines — Certification.
- 7-5-518. Machines inactivated until polls open — Adjustment of counters.
- 7-5-519. [Repealed.]
- 7-5-520. Instructions for voters using voting machines.
- 7-5-521. Arrangement of polling place.
- 7-5-522. Voting procedure.

## SECTION.

- 7-5-523. [Repealed.]  
 7-5-524. Voter access to machines — Persons in line at closing time.  
 7-5-525. Write-in votes.  
 7-5-526. Closing of polls — Securing machines — Poll workers' certificate.  
 7-5-527. Exposure of count — Verification — Return record — Official signatures.

## SECTION.

- 7-5-528. Machines released to officers.  
 7-5-529. Tabulation of returns.  
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 7-5-531. Retention of audit data — Machines to remain secured until results are certified except on court order.  
 7-5-532. Direct electronic voting machines.

**Effective Dates.** Acts 1969, No. 465, Art. 13, § 10: approved Apr. 17, 1969. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the present election laws are ancient and outdated in part and have caused and are causing much confusion and controversy, that there are particular problem areas in the present law which need immediate legislation in order to resolve same, that elections are and will continue to be held and conducted in this atmosphere of confusion and controversy until these problem areas are resolved and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in force and effect from and after its passage."

Acts 1970 (Ex. Sess.), No. 5, § 3: Mar. 13, 1970. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the proper and efficient conduct of elections and party primary elections in this state in those counties in which voting machines are used, that the cost of preparing voting machines for all elections including party primary elections and the cost of transporting the machines to and from the polling places shall be paid by the county, and that this act is immediately necessary to include this provision in the Arkansas Election Code. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1970 (Ex. Sess.), No. 25, § 3: Approved Mar. 13, 1970. Emergency clause provided: "It is hereby found and declared

by the General Assembly of the State of Arkansas, the election laws require that voting machines used in any election must remain locked and sealed for ten (10) days after the election, thereby rendering it impossible for the appropriate committee charged with conducting the election to program such machines for any immediate, successive run-off election; that preferential and general primary elections will be held and conducted in the immediate future and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in force and effect from and after its passage."

Acts 1979, No. 738, § 6: Apr. 6, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the election laws of this state permit the citizens of municipalities and counties to express their binding preference for the acquisition and use of voting machines or electronic voting systems only upon the approval of the question of their use at a general election, and present laws prohibit the mixed use of such machines and systems, and that the efficient and economic conduct of elections requires that local election officials and taxpayers have all reasonable options readily available in organizing and conducting elections at the earliest date. Therefore, an emergency is declared to exist, and this act, being necessary for the immediate preservation of the public peace, health, order, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 843, § 5: Mar. 29, 1991. Emergency clause provided: "It is found and determined by the General Assembly



of the State of Arkansas that currently lever or mechanical voting machines are used in a number of counties and municipalities; that to obtain additional machines or replacement parts for the machines is impossible or impractical; that this act is necessary to insure that all voters have a reasonable opportunity to vote in an election and to prevent unnecessary cost and delays. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2005, No. 2233, § 48: Jan. 1, 2006.

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this

act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

**Am. Jur.** 26 Am. Jur. 2d, Elections, § 253.

**C.J.S.** 29 C.J.S., Elections, § 203.

### 7-5-501. [Repealed.]

**Publisher's Notes.** This section, concerning acquisition — places of installation was repealed by Acts 2005, No. 2233, § 9. The section was derived from Acts

1969, No. 465, Art. 12, §§ 3, 5; 1979, No. 738, §§ 1, 3; A.S.A. 1947, §§ 3-1203, 3-1203.1, 3-1205; Acts 1991, No. 843, § 1; 1995, No. 774, § 1; 1997, No. 446, § 1.

### 7-5-502. Application of election laws and penalties.

All laws of this state applicable to elections where voting is done in any manner other than by machines and all penalties prescribed for violation of these laws shall apply to elections and precincts where voting machines are used insofar as they are applicable.

**History.** Acts 1969, No. 465, Art. 12, § 33; A.S.A. 1947, § 3-1233.

### 7-5-503. Examination and approval of machines by State Board of Election Commissioners.

(a) Any person or corporation selling voting machines may apply to exhibit machines to the State Board of Election Commissioners.

(b) The state board shall examine the machine and file a report of its accuracy, efficiency, and capacity with the office of the Secretary of State.

(c) If the kind of machine examined complies with the requirements of § 7-5-504 and can be safely used by voters at elections under the

conditions prescribed, the machine shall be deemed approved by the state board, and machines of its kind may be adopted for use at elections if selected for use by the Secretary of State. When the machine has been approved, any improvement or change that does not impair its accuracy, efficiency, or capacity shall not render necessary a reexamination or reapproval.

(d) A form of voting machine not approved cannot be used at any election.

**History.** Acts 1969, No. 465, Art. 12, § 1; A.S.A. 1947, § 3-1201; Acts 2005, No. 2233, § 10.

#### **7-5-504. Machine specifications.**

No make of voting machine shall be approved for use unless it is so constructed that:

- (1) It will ensure secrecy to the voter in the act of voting;
- (2) It shall provide facilities for voting for or against as many questions as may be submitted;
- (3) It shall permit the voter to vote separately for the candidate of his or her choice for each office or position to be voted upon and to vote separately on each issue to be decided by election;
- (4) It shall permit the voter to vote for as many persons for an office for whom he or she is lawfully entitled to vote, but no more;
- (5) It shall prevent the voter from voting for the same candidate or question more than one (1) time;
- (6) It shall permit the voter to verify in a private and independent manner the votes selected by the voter on the ballot before the ballot is cast;
- (7) It shall provide the voter with the opportunity in a private and independent manner to change the ballot or correct any error before the ballot is cast;
- (8) It shall include a voter-verified paper audit trail, except as provided under § 7-5-301(b);
- (9) If the voter is legally entitled to select only one (1) candidate for an office but the voter selects more than one (1) candidate for the office, it shall notify the voter before the ballot is cast that he or she has selected more than one (1) candidate for the office on the ballot, notify the voter of the effect of casting multiple votes for the office, and provide the voter with the opportunity to correct the ballot before the ballot is cast;
- (10) It shall permit the voter to vote for or against any question on which he or she may have the right to vote, but no other;
- (11) It shall be capable of being programmed to display for voting purposes only the voter's proper ballot;
- (12) It shall correctly register and record and accurately count all votes cast for any and all persons and for or against any and all questions;

(13) It shall be provided with a protective device to prevent any unauthorized operation of the machine before or after the election;

(14) It shall be provided with a counter or tabulator which shall show at all times during the election how many persons have voted;

(15) It shall be so equipped and constructed so that it can be made inaccessible to further voting after the polls have closed and all voters who were in line at the time the polls closed have voted;

(16) It shall permit a voter to vote in any election for any person for whom he or she wishes to vote when the person's name does not appear upon the voting machine;

(17) It bears a number that will distinguish it from any other machine;

(18) It shall be provided with a screen, hood, or partition which shall allow the voter to vote a secret ballot;

(19) It shall be capable of being operated from an alternate power source should the need arise;

(20) It shall permit voters with disabilities to vote unassisted if they so desire; and

(21) It shall be:

(A) Qualified by the National Association of State Election Directors or an authorized federal agency;

(B) Approved by the State Board of Election Commissioners; and

(C) Selected by the Secretary of State.

**History.** Acts 1969, No. 465, Art. 12, § 2; A.S.A. 1947, § 3-1202; Acts 2005, No. 654, § 1; 2005, No. 2233, § 11.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2005 Arkansas General Assembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.

### 7-5-505, 7-5-506. [Repealed.]

**Publisher's Notes.** These sections, concerning guarantee and supervisory personnel required and purchase by sealed bid — uniformity of machines was repealed by Acts 2005, No. 2233, § 9. These sections were derived from the following sources:

7-5-505. Acts 1969, No. 465, Art. 12, § 6; A.S.A. 1947, § 3-1206.

7-5-506. Acts 1969, No. 465, Art. 12, § 4; A.S.A. 1947, § 3-1204; Acts 1997, No. 446, § 2.

### 7-5-507. Demonstration — Assistance in operating machine.

(a) The manufacturer shall demonstrate the machine to the election officials prior to the first election at which the machines are placed in use. The date for the demonstration shall be set by the county board of election commissioners.

(b) On the date of the first election at which voting machines are used, manufacturers shall make employees available in each county



where the machines are in operation to assist the county board in any manner that will expedite voting and provide efficient operation of voting machines. After the first election, the county board shall obtain the assistance needed in operating the machines, and the county board shall collect and pay expenses for this assistance as it would for any other election cost.

**History.** Acts 1969, No. 465, Art. 12, § 8; A.S.A. 1947, § 3-1208; Acts 1997, No. 446, § 3; 2005, No. 2233, § 14.

### **7-5-508. [Repealed.]**

**Publisher's Notes.** This section, concerning custody and use of machines — costs was repealed by Acts 2005, No. 2233, § 15. The section was derived from Acts 1969, No. 465, Art. 12, § 7; 1970 (Ex. Sess.), No. 5, § 1; A.S.A. 1947, § 3-1207; Acts 1997, No. 446, § 4.

### **7-5-509. Machines used for demonstration.**

(a) The county board of election commissioners may designate suitable times and places where voting machines shall be exhibited for the purpose of giving instructions in their use to all voters who apply for instruction.

(b) At least one (1) machine for demonstration purposes shall be placed in each precinct not more than twenty-five (25) days nor less than ten (10) days before each election, when practical. The location of voting machines for demonstration shall be in accessible public buildings. The voting machines used for demonstration shall display sample ballots showing the title of offices to be filled and, as far as practicable, the names of the candidates in the next election.

(c) No voting machine that is to be assigned for use in any election shall be used for instruction after having been prepared and secured for the election. Machines shall not be used for demonstration purposes during the time that the polls are open on election day or if the demonstration shall in any way interfere with the proper adjustment, securing, or use of the machine in the election.

**History.** Acts 1969, No. 465, Art. 12, § 11; A.S.A. 1947, § 3-1211; Acts 2005, No. 2233, § 16.

### **7-5-510. Forms for complaints about function of voting machine — Investigation.**

(a) At each polling place at which voting machines are used, the county board of election commissioners shall provide forms that voters may use for complaints about the function of a voting machine. The complaint form shall include space for the following information:

(1) The name, address, and telephone number of the person making the complaint;

- (2) The identification number of the voting machine;
- (3) The complaint; and
- (4) Such other information concerning the complaint as the State Board of Election Commissioners determines to be appropriate to carry out the intent of this section.

(b) A voter may file a complaint form with a poll worker who shall forward the complaint form to the county board of election commissioners. It shall be the duty of the county board of election commissioners to investigate complaints regarding the function of a voting machine.

**History.** Acts 1985, No. 562, § 1; A.S.A. 1947, § 3-1235; Acts 1997, No. 446, § 5; 2009, No. 959, § 23.

**Amendments.** The 2009 amendment substituted “a poll worker” for “an election official” in (b).

### 7-5-511. [Repealed.]

**Publisher’s Notes.** This section, concerning ballot label — definition — form — content was repealed by Acts 2005, No. 2233, § 17. The section was derived from

Acts 1969, No. 465, Art. 12, § 9; 1975, No. 358, § 1; A.S.A. 1947, § 3-1209; Acts 1987, No. 247, § 4; 1991, No. 356, §§ 1, 2; 1997, No. 446, § 6.

### 7-5-512. Certification of ballot styles — Equipment furnished to polling sites.

(a) It shall be the duty of the county board of election commissioners to prepare and certify the ballot styles for the voting machine.

(b) In addition, the county board shall furnish any election materials and supplies as may be necessary or as may be required by law.

(c) The voting machine shall be delivered by the county board to the election officials at each polling site.

(d) The county board shall supply each precinct with clear, written instructions suitable for the instruction of voters that illustrate the manner of voting on the machine.

**History.** Acts 1969, No. 465, Art. 12, § 12; A.S.A. 1947, § 3-1212; Acts 1997, No. 446, § 7; 2005, No. 2233, § 18; 2007, No. 222, § 9.

**Amendments.** The 2007 amendment rewrote (b).

### 7-5-513. Machine breakdown — Delivery of ballot materials.

The county board of election commissioners in any county in which voting machines are to be used shall be ready at any time on election day to deliver ballots, ballot boxes, replacement voting machines, if available, or other necessary equipment required by law for voting to any precinct in the county, town, or city upon notice that any voting machine is out of order or fails to work.

**History.** Acts 1969, No. 465, Art. 12, § 31; A.S.A. 1947, § 3-1231; Acts 1997, No. 446, § 8; 2005, No. 2233, § 19.

## CASE NOTES

**Cited:** *Files v. Hill*, 268 Ark. 106, 594 S.W.2d 836 (1980).

**7-5-514. [Repealed.]**

**Publisher's Notes.** This section, concerning authority to use both machines and ballots, was repealed by Acts 1997, No. 446, § 9. The section was derived from Acts 1969, No. 465, Art. 12, §§ 31, 32; A.S.A. 1947, §§ 3-1231, 3-1232.

**7-5-515. Preparation of machines for election.**

(a) Immediately upon the proper certification of candidates and questions, the county board of election commissioners shall prepare the voting machines, oversee their programming, and test and adjust the voting machines for the election.

(b) In performing this function, the county board may be assisted by experts appointed or employed by the county board.

(c)(1) At least seven (7) days prior to the beginning of voting, the county board, with respect to all elections, shall have each machine tested to ascertain that the voting system will correctly count the votes cast for all offices and on all measures.

(2) Public notice of the time and place of the test shall be given at least forty-eight (48) hours prior to the test by publication one (1) time in one (1) or more daily or weekly newspapers published in the town, city, or county using the machines if a newspaper is published in the town, city, or county.

(3) The test shall be open to representatives of the political parties, candidates, media, and the public.

(4) The test shall be conducted by processing a preaudited group of test ballots that are to be voted on the machines so as to record a predetermined number of valid votes for each candidate and on each measure. The test shall include for each office one (1) or more ballots which have votes in excess of the number allowed by law in order to test the ability of the machines to reject the votes.

(5) If any error is detected, the cause shall be ascertained and corrected and an errorless count shall be made before the machine is approved.

(d) After completion of the test, the ballots and programs used shall be sealed, retained, and disposed of as provided by law.

(e) After completion of the test, the county board of election commissioners shall certify the accuracy of the voting system and file the test results with the county clerk.

**History.** Acts 1969, No. 465, Art. 12, §§ 10, 13; A.S.A. 1947, §§ 3-1210, 3-1213; Acts 1997, No. 446, § 10; 2005, No. 2233, § 20; 2009, No. 1480, § 33.

**Amendments.** The 2009 amendment rewrote (c)(1).



**7-5-516. Notice to candidates of preparation — Rules and statutes unaffected.**

Before the county board of election commissioners begins the preparation of the machines for any election, it shall publish a notice in a newspaper of general circulation in the county stating:

(1) The time and place the machines will be prepared for the election; and

(2) A time at which one (1) representative of each candidate may inspect to see that the machines are in proper condition for use in the election.

**History.** Acts 1969, No. 465, Art. 12, § 14; A.S.A. 1947, § 3-1214; Acts 1997, No. 446, § 11; 2009, No. 959, § 24.

**Amendments.** The 2009 amendment deleted (b); and substituted “publish a

notice in a newspaper of general circulation in the county” for “mail a notice in due time to candidates or any representatives designated by candidates” in the introductory language.

**7-5-517. Securing machines — Certification.**

(a) When a voting machine has been properly prepared by the county board of election commissioners and examined by the representatives of the candidates or the candidate himself or herself, it shall be made inaccessible to voting.

(b) Any device required to activate the machine shall be placed in a package on which shall be written the serial number and the precinct location of the voting machine and the number registered on the protective counter or device. The package shall be sealed in the presence of the representatives of the candidates or the candidates themselves.

(c) The county board of election commissioners shall then certify, in the presence of the candidates or their representatives, the serial numbers of the machines, that all question counters are set at zero (000), and the number registered on the protective counter of the machine.

(d) Any activator pack or device required for voting on the voting machines shall be kept by the county board until turned over for delivery to the election officials with the election equipment at the polling site for election day.

**History.** Acts 1969, No. 465, Art. 12, § 15; A.S.A. 1947, § 3-1215; Acts 1997, No. 446, § 12; 2005, No. 2233, § 21.

**7-5-518. Machines inactivated until polls open — Adjustment of counters.**

(a) The voting machine shall remain inactivated against voting until the polls are formally opened and shall not be operated except by voters for voting.

(b) If any counter is found not to register zero (000), the poll workers shall immediately notify the county board of election commissioners, who shall cause the counters to be adjusted at zero (000).

(c)(1) The poll workers shall produce one (1) printout from each machine showing whether the candidate and question counters register zero (000) and shall sign and post the printout upon the wall of the polling room, where it shall remain throughout the election day.

(2) The certified printout shall be filed with the election returns.

**History.** Acts 1969, No. 465, Art. 12, § 16; A.S.A. 1947, § 3-1216; Acts 1997, No. 446, § 13; 2005, No. 2233, § 22; 2007, No. 835, § 1; 2009, No. 959, § 25.

**Amendments.** The 2007 amendment

substituted “counter” for “counter or tabulator” in (b).

The 2009 amendment substituted “poll workers” for “election officials” in (b) and (c)(1).

### 7-5-519. [Repealed.]

**Publisher’s Notes.** This section, concerning unlocking machine for vote — custody of keys, was repealed by Acts 2005, No. 2233, § 23. The section was

derived from Acts 1969, No. 465, Art. 12, § 17; A.S.A. 1947, § 3-1217; Acts 1997, No. 446, § 14.

### 7-5-520. Instructions for voters using voting machines.

During the election, each voter shall be instructed regarding the operation of voting machines before voting. The voter’s attention shall also be called to the sample ballot, so that the voter shall become familiar with the questions, the names of the offices, and the names of the candidates.

**History.** Acts 1969, No. 465, Art. 12, § 18; A.S.A. 1947, § 3-1218; Acts 1997, No. 446, § 15; 2005, No. 2233, § 24.

### 7-5-521. Arrangement of polling place.

(a) The exterior of the voting machine and every part of the polling place shall be in plain view of the poll workers.

(b) The machine shall be placed so that no person can see or determine how the voter casts his or her vote.

(c) After the opening of the polls, the poll workers shall not allow any person to pass to the part of the room where the machine is situated, except for the purpose of voting.

**History.** Acts 1969, No. 465, Art. 12, § 22; A.S.A. 1947, § 3-1222; Acts 1997, No. 446, § 16; 2005, No. 2233, § 25; 2009, No. 959, § 26.

**Amendments.** The 2009 amendment substituted “poll workers” for “election officials” in (a) and (c).

## CASE NOTES

**Cited:** *Dust v. Riviere*, 277 Ark. 1, 638 S.W.2d 663 (1982).

**7-5-522. Voting procedure.**

(a)(1) When a voter presents himself or herself for the purpose of voting, the poll workers shall ascertain whether he or she is properly qualified and registered under § 7-5-305.

(2) In preparing the machines, the poll workers shall ensure that each voter will have access only to the proper ballot.

(b) Only one (1) voter at a time shall be permitted to approach a voting machine. Having cast his or her vote, the voter shall at once move away from the voting machine and leave the polling room by the exit provided.

(c) A voter having left the voting machine shall not be permitted to return to the voting machine except to complete the voting process.

(d) If a voter leaves an electronic ballot on a voting machine on which the voter has either made some or no selections and has failed to complete the process of casting the ballot and failed to notify a poll worker of his or her desire to cancel the ballot before departing the polling site, two (2) poll workers shall take action to complete the process of casting the ballot and shall document:

- (1) The time;
- (2) The name of the voter, if known;
- (3) The names of the poll workers completing the process of casting the ballot; and
- (4) All other circumstances surrounding the abandoned ballot.

**History.** Acts 1969, No. 465, Art. 12, § 21; A.S.A. 1947, § 3-1221; Acts 1989, No. 342, § 1; 1997, No. 446, § 17; 2005, No. 2233, § 26; 2007, No. 835, § 2; 2009, No. 959, § 26.

**Amendments.** The 2007 amendment added (d).

The 2009 amendment substituted “poll workers” for “election officials” or “election officers” or variants in five places, and made minor stylistic changes.

**7-5-523. [Repealed.]**

**Publisher’s Notes.** This section, concerning assistance to voters with disabilities, was repealed by Acts 2007, No. 835, § 4. The section was derived from Acts

1995, No. 908, § 2; 1995, No. 1296, § 40; 1997, No. 446, § 18; 2003, No. 1308, § 3; 2005, No. 2233, § 27.

**7-5-524. Voter access to machines — Persons in line at closing time.**

(a) During the time that the polls are open for voting, no more voters shall be permitted to approach the voting machine than there are vacant machines available for voting.



(b) At the time of the closing of the polls, all persons who have presented themselves for voting and who are then in line at the polling place shall be permitted to cast their votes as now provided by law. Every person in line shall have the opportunity to vote.

**History.** Acts 1969, No. 465, Art. 12, § 23; A.S.A. 1947, § 3-1223.

#### **7-5-525. Write-in votes.**

(a) Votes for any person whose name does not appear on the voting machine as a qualified candidate for office are referred to in this section as write-in votes.

(b)(1) The voting machine shall be programmed to allow a voter to enter the name of a qualified write-in candidate on the ballot.

(2) A write-in vote shall be cast in the appropriate place on the ballot, or the vote for that candidate shall be void and not counted.

(c) Write-in votes shall not be counted in primary elections.

**History.** Acts 1969, No. 465, Art. 12, § 20; A.S.A. 1947, § 3-1220; Acts 2005, No. 2233, § 28.

#### **7-5-526. Closing of polls — Securing machines — Poll workers' certificate.**

(a) At the official time for closing the polls and upon termination of the voting, the poll workers shall announce that the polls have closed and in the presence of all persons authorized to be present shall remove the activation packs or devices from the voting machines to make them inaccessible to further voting.

(b) At the same time, the poll workers shall sign a certificate provided by the county board of election commissioners stating that the machines were made inaccessible to further voting and giving the exact time and the number of votes shown on the public counters.

**History.** Acts 1969, No. 465, Art. 12, § 24; A.S.A. 1947, § 3-1224; Acts 1997, No. 446, § 19; 2005, No. 2233, § 29; 2009, No. 959, § 27.

**Amendments.** The 2009 amendment substituted "poll workers" for "election officials" in (a) and (b).

#### **7-5-527. Exposure of count — Verification — Return record — Official signatures.**

(a) The poll workers shall then expose the count in the presence of all persons authorized to be present.

(b) It is the intention of this section to accord a full, complete, and public view of the count from each voting machine to all poll workers and designated watchers for the candidates or parties.

(c)(1) The poll worker shall proceed to produce the return record in a minimum of three (3) copies.

(2)(A) The return record shall be deemed the official count for that machine.

(B) One (1) copy of the completed return record for that machine shall be posted upon the wall of the polling room for all to see.

(d) The poll workers shall sign the machine return record produced by the device.

(e)(1) The activation pack or device used to collect votes from each voting machine and all certified return records shall be placed in a package that shall be sealed and signed by all the poll workers and any watchers that may desire to affix a signature.

(2)(A) The sealed package shall be immediately returned to the county board of election commissioners by one (1) of the poll workers selected for this purpose, accompanied by those other poll workers and watchers who desire to join the poll worker.

(B) The poll worker shall obtain a receipt for the sealed package.

**History.** Acts 1969, No. 465, Art. 12, §§ 25, 26; A.S.A. 1947, §§ 3-1225, 3-1226; Acts 1997, No. 446, § 20; 2005, No. 2233, § 30; 2009, No. 959, § 27.

**Amendments.** The 2009 amendment substituted “poll workers” for “election officials” or variant throughout the section.

#### **7-5-528. Machines released to officers.**

Voting machines shall be released to a person designated by the county board of election commissioners for storage in a secure facility designated by the county board.

**History.** Acts 1969, No. 465, Art. 12, § 27; A.S.A. 1947, § 3-1227; Acts 1997, No. 446, § 21; 2007, No. 835, § 5.

substituted “Machines released to officers” for “Proclamation of election results” in the section heading, and rewrote the section.

**Amendments.** The 2007 amendment

#### **7-5-529. Tabulation of returns.**

(a) The county board of election commissioners shall compile county-wide totals from the activation pack or device used to collect votes from each voting machine.

(b) Prior to certification of the official election results, the county board of election commissioners shall manually compile countywide totals from the polling location’s certified return records and verify that they match the electronically derived totals from the activation pack or device used to collect votes from each machine.

**History.** Acts 1969, No. 465, Art. 12, § 28; A.S.A. 1947, § 3-1228; Acts 1997, No. 446, § 22; 2005, No. 2233, § 31.

#### **7-5-530. Securing audit materials upon election contest or recount.**

(a) The county board of election commissioners shall produce an audit log for each voting machine used in the election.

(b) In the event that there is an election contest filed, the judge of the court that has jurisdiction may order the county board to secure the audit logs and the voter-verified paper audit trail alleged in the contest to be in question. The county board shall store them in a secure place in the county courthouse under lock and key awaiting further orders of the court.

(c) In the event that any candidate in any election in which the machines have been utilized or any voter who questions the count of any question posed at any election gives written notice to the county board that he or she desires a recount, then the applicable county board shall secure the audit logs and voter-verified paper audit trails and store them in a secure place in the county courthouse awaiting further orders of the applicable county board or court.

**History.** Acts 1969, No. 465, Art. 12, § 29; A.S.A. 1947, § 3-1229; Acts 1997, No. 446, § 23; 2005, No. 2233, § 32; 2007, No. 835, § 6.

**Amendments.** The 2007 amendment

substituted "Securing audit materials upon election contest or recount" for "Machines released to officials — Impounding upon election contest or recount" in the section heading; and rewrote the section.

### **7-5-531. Retention of audit data — Machines to remain secured until results are certified except on court order.**

(a) All audit logs and voter-verified paper audit trails produced by a voting machine shall remain secured for a period of two (2) years.

(b)(1) All voting machines used in any election shall remain secured for a period of at least three (3) days following the election unless the machines are ordered to be activated sooner by and on the authority of an order of a court of competent jurisdiction, in the event that the issue of the election should be in judicial controversy.

(2) Should no order be entered, it shall be the duty of the county board of election commissioners to clear the machines for future elections after the results of the election have been certified.

**History.** Acts 1969, No. 465, Art. 12, § 30; 1970 (Ex. Sess.), No. 25, § 1; A.S.A. 1947, § 3-1230; Acts 1997, No. 446, § 24; 2005, No. 2233, § 33.

### **7-5-532. Direct electronic voting machines.**

(a) For purposes of this section:

(1) "Direct electronic voting machine" means a voting machine that:

(A) Records votes by means of a ballot display provided with mechanical or electro-optical components that may be actuated by the voter;

(B) Processes the data by means of a computer program;

(C) Records voting data and ballot images in internal or external memory components; and

(D) Produces a tabulation of the voting data stored in a removable memory component and in a printed copy; and



(2) “Voter-verified paper audit trail” means a contemporaneous paper record of a ballot printed for the voter to confirm his or her votes before the voter casts his or her ballot.

(b) The Secretary of State or the county shall not purchase or procure a direct-recording electronic voting machine that does not include a voter-verified paper audit trail.

(c)(1) All direct-recording electronic voting machines in use on or after January 1, 2006, shall include a voter-verified paper audit trail, except for those direct recording electronic voting machines in use during the 2004 general election.

(2) All direct-recording electronic voting machines purchased on or after August 12, 2005, shall include a voter-verified paper audit trail.

(d) A direct-recording electronic voting machine with a voter-verified paper audit trail shall meet the following conditions:

(1) The voter-verified paper audit trail may be verified by the voter before the casting of the voter’s ballot;

(2) The voter-verified paper audit trail shall not be retained by the voter;

(3) The voter-verified paper audit trail shall not contain individual voter information;

(4) The paper used in producing the voter-verified paper audit trail shall be sturdy, clean, and resistant to degradation; and

(5) The voter-verified paper audit trail shall be readable in a manner that makes the voter’s ballot choices obvious to the voter without the use of computer or electronic code.

(e) Voter-verified paper audit trails shall be preserved in the same manner and for the same time period as ballots and certificates are preserved under § 7-5-702.

**History.** Acts 2005, No. 654, § 2; 2007, No. 835, § 7; 2009, No. 959, § 28.

**Amendments.** The 2007 amendment, in (b), substituted “Secretary of State” for

“State Board of Election Commissioners” and “county” for “county board of election commissioners.”

The 2009 amendment deleted (e)(1).

RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2005 Arkansas General As-

sembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.

SUBCHAPTER 6 — PAPER BALLOTS AND ELECTRONIC VOTE TABULATING DEVICES

SECTION.	SECTION.
7-5-601. Paper ballots — Form.	7-5-606. Approval of equipment — Specifications.
7-5-602. Ballots — Number — Official — Marking device — Spoiled.	7-5-607. Arrangement of polling place.
7-5-603. Counting paper ballots at the polling site.	7-5-608. [Repealed.]
7-5-604. Authorization — Election laws applicable.	7-5-609. Spoiled ballots.
7-5-605. [Repealed.]	7-5-610. Write-in ballots.
	7-5-611. Preparation of electronic vote tabulating devices — Test

## SECTION.

— Disposition of voting materials.

7-5-612. [Repealed.]

7-5-613. Counting ballots and write-in votes.

7-5-614. Locations for vote tabulation — Procedures.

## SECTION.

7-5-615. Tabulation of votes — Defective ballots — Certification of returns.

7-5-616. Penalty.

**Amendments.** The 2009 amendment by Acts 2009, No. 1480, § 34, substituted “Paper Ballots and Electronic Vote Tabulating Devices” for “Electronic Voting” in the subchapter heading.

**Effective Dates.** Acts 1977, No. 77, § 10: Jan. 31, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that the election laws of this state authorize counties to use voting machines in primary, general, special, and school elections, but do not authorize the use of electronic voting systems which have been developed by modern technology, and that it is essential to the efficient operation of elections in this state that election officials in the respective counties be authorized to use electronic voting systems which meet the standards prescribed in this act, and that the immediate passage of this act is necessary in order to enable local election officials to follow procedures established in this act in establishing electronic voting systems prior to the next regular primary and general elections. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1979, No. 738, § 6: Apr. 6, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that the election laws of this state permit the citizens of municipalities and counties to express their binding preference for the acquisition and use of voting machines or electronic voting systems

only upon the approval of the question of their use at a general election, and present laws prohibit the mixed use of such machines and systems, and that the efficient and economic conduct of elections requires that local election officials and taxpayers have all reasonable options readily available in organizing and conducting elections at the earliest date. Therefore, an emergency is declared to exist, and this act, being necessary for the immediate preservation of the public peace, health, order, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 2005, No. 2233, § 48: Jan. 1, 2006.

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

### 7-5-601. Paper ballots — Form.

(a) All paper ballots provided by the county board of election commissioners of any county in this state for any election shall be alike and shall be printed in plain type.

(b) Each ballot shall be printed on paper with a perforated portion capable of being detached for use as the ballot stub.

(c)(1) As ballots are printed, the portion that shall be used as the ballot stub shall be numbered consecutively beginning with the number one (1).

(2) The number on the last ballot printed shall show the total number of ballots provided for the election.

(d)(1) The heading on the front or inner side of each ballot shall be: "OFFICIAL BALLOT. Vote by placing an appropriate mark opposite the person for whom you wish to vote".

(2) If the ballot contains an initiated or referred amendment, act, or measure, the heading shall also contain these words: "Vote on amendments, acts, and measures by placing an appropriate mark below the amendment (or act or measure) either FOR or AGAINST".

(e) Beneath the heading on each paper ballot there shall be printed instructions that inform the voter:

(1) Of the effect of casting multiple votes for an office; and

(2) How to correct the ballot before it is cast and counted, including without limitation instructions on how to correct an error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct an error.

**History.** Acts 1977, No. 77, § 1; A.S.A. 1947, § 3-1801n; Acts 2005, No. 2233, § 34; 2009, No. 1480, § 35; 2011, No. 1020, § 2.

rewrote the section heading and the section.

The 2011 amendment substituted "below" for "above" in (d)(2).

**Amendments.** The 2009 amendment

### RESEARCH REFERENCES

**ALR.** Electronic voting systems. 12 A.L.R.6th 523.

### CASE NOTES

#### Legislative Intent.

With the introduction of electronic voting, the legislature did not intend to repeal or modify any of the laws authorizing the use of paper ballots or voting machines; rather, it was the purpose of the

legislature to establish an additional and supplemental method of marking vote cards and tabulating election results. *Womack v. Foster*, 340 Ark. 124, 8 S.W.3d 854 (2000).

### 7-5-602. Ballots — Number — Official — Marking device — Spoiled.

(a)(1) The county board of election commissioners of each county in this state using paper ballots counted by hand at the polling site, paper



ballots counted by an electronic vote tabulating device at the polling site, or paper ballots cast at a polling site and counted at a central location shall provide for each election precinct one hundred fifty (150) printed ballots for each one hundred (100) or fraction of one hundred (100) electors voting on paper ballots at the last preceding comparable election.

(2) The total number of ballots required to be printed for each election precinct shall not exceed one hundred five percent (105%) of the total number of registered voters for the respective precinct.

(b) A ballot shall not be received or counted in any election to which this subchapter applies unless it is provided by the county board under this section.

(c) At all elections in counties that use paper ballots and in which those ballots are counted by hand, the ballots shall be marked using permanent ink.

(d)(1) A voter who shall by accident or mistake mar or spoil any ballot so that he or she cannot conveniently or clearly vote on the ballot may return it to the poll workers and receive another ballot, not to exceed three (3) ballots in total.

(2) Spoiled ballots shall be cancelled by a poll worker's writing "CANCELLED" on its face and initialing the ballot.

(3) The cancelled ballots shall be preserved separately from other ballots and returned to the county board of election commissioners and shall be open to public inspection.

**History.** Acts 2009, No. 1480, § 36.

### **7-5-603. Counting paper ballots at the polling site.**

When paper ballots are to be counted at the polling site, the following procedures shall be followed:

(1)(A) In counting the ballots, the ballot box shall be opened and each ballot shall be counted in turn or by counting by offices and issues.

(B) The poll workers shall witness the counting of the ballots and shall keep separate tally lists of the votes cast for each candidate or issue on the ballot;

(2)(A) When two (2) or more ballots are found folded together, it shall be considered as conclusive evidence the ballots are fraudulent and neither of the ballots shall be counted.

(B) If a ballot is found to contain marks for more than the maximum allowable number of candidates in any one (1) contest, the contest shall be considered overvoted, and it shall be the responsibility of the poll workers to determine the voter's intent;

(3)(A) Upon the close of the polls, the poll workers immediately shall certify and attest the list of voters and continue the count to completion.

(B) If a poll worker becomes sick or incapacitated from any other cause, the remaining poll workers shall continue the count until it is completed;

(4) After the count is completed, the poll workers shall make out the certificates of election in triplicate and immediately post one (1) copy outside the polling site; and

(5)(A) The counting of ballots shall be open to the public.

(B) Any candidate or political party may be present in person or by representative designated in writing under § 7-5-312 at the count of the ballots in any election for the purpose of determining whether or not the ballots in any election precinct are fairly and accurately counted.

(C) The candidate in person or an authorized representative of the candidate or political party shall be permitted, upon a request's being made to a poll worker, to inspect any or all ballots after the ballots have been counted.

**History.** Acts 1977, No. 77, § 8; A.S.A. 1947, § 3-1807; Acts 2005, No. 2233, § 35; 2009, No. 1480, § 37.

**Amendments.** The 2009 amendment rewrote the section heading and the section.

### **7-5-604. Authorization — Election laws applicable.**

(a) Paper ballot voting systems that include electronic vote tabulating devices may be used in elections, provided that the systems shall:

(1) Enable the voter to cast a vote in secrecy;

(2) Enable the voter to vote for all offices and measures on which he or she is entitled to vote;

(3) Permit the voter to verify in a private and independent manner the votes selected by the voter on the ballot before the ballot is cast;

(4) Provide the voter with the opportunity in a private and independent manner to change the ballot or correct any error before the ballot is cast;

(5)(A) Notify the voter that he or she has selected more than one (1) candidate for the office, notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office, and provide the voter with the opportunity to correct the ballot before the ballot is cast if the voter is legally entitled to select only one (1) candidate for an office but the voter selects more than one (1) candidate for the office.

(B) Electronic vote tabulating devices used to cast and count votes at the polling place shall be programmed to reject ballots containing overvotes as described in this section.

(C) When votes are cast at polling places and are to be counted by hand or at the courthouse or other central counting location, the county board of election commissioners shall provide a voter education program to inform the voters:

(i) Of the effect of casting multiple votes for an office; and

(ii) How to correct the ballot before it is cast, including, but not limited to, instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error;

(6)(A) Notify the voter that the voter has selected more than the allowed number of candidates for the office on the ballot, notify the voter before the ballot is cast and counted of the effect of casting more than the allowed number of votes for that office, and provide the voter with the opportunity to correct the ballot before the ballot is cast if the voter is legally entitled to select multiple candidates for an office but the voter selects more than the number of candidates he or she is legally entitled to select.

(B) Electronic vote tabulating devices used to cast and count votes at the polling places shall be programmed to reject ballots containing overvotes as described in this section.

(C) When votes are cast at polling places and are to be counted by hand or at the courthouse or other central counting location, the county board of election commissioners shall provide a voter education program to inform the voters:

(i) Of the effect of casting more votes than the voter is legally entitled to cast for an office; and

(ii) How to correct the ballot before it is cast, including, but not limited to, instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error;

(7) Permit the voter to vote:

(A) At any election for all persons and officers for whom he or she is lawfully entitled to vote and no others;

(B) For as many persons for an office as he or she is entitled to vote;

(C) For or against any question upon which he or she is entitled to vote; and

(D) By means of a single device, if authorized by law, for all candidates for one (1) party or to vote a split ticket as he or she desires;

(8) Permit the voter by one (1) mark to vote for the candidates for that party for president, vice president, and their presidential electors at presidential elections;

(9) Generate a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set to zero (000); and

(10) Generate a printed record at the finish of its operation of the total number of:

(A) Voters whose ballots have been tabulated;

(B) Votes cast for each candidate whose name appears on the ballot;

(C) Votes cast for or against any question appearing on the ballot; and

(D) Undervotes and overvotes by contest.

(b) So far as applicable, the procedures provided by law for voting by other means and the conduct of the election in regard thereto by the election officials, not otherwise inconsistent with this subchapter, shall apply to the system of electronic vote tabulation as authorized in this subchapter.



**History.** Acts 1977, No. 77, § 3; 1979, No. 738, § 2; A.S.A. 1947, § 3-1802; Acts 2005, No. 2233, § 36; 2009, No. 1480, § 38.

**Amendments.** The 2009 amendment substituted "Paper ballot voting" for "Voting" in the introductory language of (a).

### **7-5-605. [Repealed.]**

**Publisher's Notes.** This section, concerning adoption by ordinance — costs was repealed by Acts 2005, No. 2233,

§ 37. The section was derived from Acts 1977, No. 77, § 3; 1979, No. 738, § 2; A.S.A. 1947, § 3-1802.

### **7-5-606. Approval of equipment — Specifications.**

(a) The State Board of Election Commissioners may promulgate rules for the administration of this subchapter and shall approve the marking devices and electronic vote tabulating devices.

(b)(1) Any person or company wishing to exhibit marking devices and electronic vote tabulating devices may file written application with the board and request an opportunity to exhibit and demonstrate devices.

(2) The board shall examine the electronic vote tabulating device and file a report in the office of the Secretary of State of its accuracy, efficiency, and capacity.

(3) If the board shall reject any device, the reasons shall be stated in the report filed with the Secretary of State.

(4) Any person or company aggrieved by any finding or ruling of the board may appeal to the Pulaski County Circuit Court within sixty (60) days from the date the report of the board is filed with the Secretary of State.

(c) After any device has been approved, it shall not be necessary that it be exhibited and approved again by the board unless there is a change or modification in the device that renders it incapable of marking ballots or tabulating votes in the same method of procedure approved by the board.

(d) Electronic vote tabulating devices not approved by the board may not be used in any lawful election in this state.

(e) No marking device or electronic vote tabulating device shall be approved unless it fulfills the requirements of this section and the federal Help America Vote Act of 2002.

**History.** Acts 1977, No. 77, § 7; A.S.A. 1947, § 3-1806; Acts 2005, No. 2233, § 38.

Vote Act of 2002, referred to in (e), is codified as 42 U.S.C. § 15301.

**U.S. Code.** The federal Help America

### **7-5-607. Arrangement of polling place.**

In precincts where an electronic vote tabulating device is used, sufficient space shall be provided for the use of the device, and it shall be arranged in such a manner as to assure secrecy in voting.

**History.** Acts 1977, No. 77, § 4; A.S.A. 1947, § 3-1803; Acts 2005, No. 2233, § 39.

### **7-5-608. [Repealed.]**

**Publisher's Notes.** This section, concerning sample voting materials, was repealed by Acts 2007, No. 222, § 10. The section was derived from Acts 1977, No. 77, § 4; A.S.A. 1947, § 3-1803; Acts 1997, No. 446, § 26; 2005, No. 2233, § 40.

### **7-5-609. Spoiled ballots.**

Any voter who spoils his or her ballot or makes an error may return it to the election officials and secure another, not to exceed three (3) in all.

**History.** Acts 1977, No. 77, § 4; A.S.A. 1947, § 3-1803; Acts 2005, No. 2233, § 41.

### **7-5-610. Write-in ballots.**

In all elections in which write-in candidacies are allowed, the ballot shall permit electors to write in the names of persons who have qualified as write-in candidates and whose names are not on the ballot.

**History.** Acts 1977, No. 77, § 4; A.S.A. 1947, § 3-1803; Acts 2005, No. 2233, § 42.

### **7-5-611. Preparation of electronic vote tabulating devices — Test — Disposition of voting materials.**

(a)(1) The county board of election commissioners, with respect to all elections, shall cause the electronic vote tabulating devices used for voting to be properly programmed and tested before delivery to the election precincts.

(2) At least seven (7) days prior to the beginning of voting, the county board, with respect to all elections, shall have each electronic vote tabulating device tested to ascertain that the devices will correctly count the votes cast for all offices and on all measures.

(3) Public notice of the time and place of the test shall be given at least forty-eight (48) hours prior thereto by publication one (1) time in one (1) or more daily or weekly newspapers published in the town, city, or county using the devices, if a newspaper is published therein.

(4) The test shall be open to representatives of the political parties, candidates, the press, and the public.

(5)(A) The test shall be conducted by processing predetermined results from a group of ballots marked to record a predetermined number of valid votes for each candidate and on each measure for each precinct or voting location.

(B) Prior to the start of the test, a printout shall be generated to show that no votes are recorded on the electronic vote tabulating device.

(C) The test shall include for each office one (1) or more ballots which have votes in excess of the number allowed by law in order to test the ability of the electronic vote tabulating devices to reject such votes.

(6) If any error is detected, the cause shall be ascertained and corrected, and an errorless count shall be made before the electronic vote tabulating device or devices are certified for use in the election.

(7) Upon completion of the testing, the electronic vote tabulating devices shall be cleared of any votes cast during the test.

(8) After completion of the test, the county board of election commissioners shall certify the accuracy of the voting system and file the test results with the county clerk.

(b)(1) Before the opening of the polls, the poll workers shall generate a printout from the electronic vote tabulating device or devices to verify that the candidates and measures are correct for the location and that no votes are recorded on the electronic vote tabulating device or devices.

(2) The poll workers shall sign and post the printout upon the wall of the polling room where it shall remain throughout the election day.

(3) The certified printout shall be filed with the election returns.

**History.** Acts 1977, No. 77, § 4; A.S.A. 1947, § 3-1803; Acts 1997, No. 446, § 27; 2005, No. 2233, § 43; 2009, No. 959, § 29; 2009, No. 1480, § 39.  
by No. 959 substituted “poll workers” for “election officials” in (b)(1) and (b)(2).  
The 2009 amendment by No. 1480 re-wrote (a)(2).

**Amendments.** The 2009 amendment

7-5-612. [Repealed.]

**Publisher’s Notes.** This section, concerning absentee ballots, was repealed by Acts 1997, No. 446, § 28. The section was derived from Acts 1977, No. 77, § 5; A.S.A. 1947, § 3-1804.

7-5-613. Counting ballots and write-in votes.

In precincts where an electronic vote tabulating device is used, as soon as the polls are closed:

(1) The poll workers shall compare the total number of voters indicated by the electronic vote tabulating device with the list of voters to ensure that the number recorded by the tabulator is the same as the number of voters shown on the list of voters who received a ballot at the polling site. If the totals are different, this fact shall be reported in writing to the county board of election commissioners with the reasons, if known; and

(2) The poll workers shall count the write-in votes and prepare a return of the votes on forms provided for that purpose.

**History.** Acts 1977, No. 77, § 6; A.S.A. 1947, § 3-1805; Acts 1997, No. 446, § 29; 2005, No. 2233, § 44; 2009, No. 959, § 30.  
**Amendments.** The 2009 amendment substituted “poll workers” for “election officials” in (1) and (2).



**7-5-614. Locations for vote tabulation — Procedures.**

For the tabulation of votes of a precinct by electronic vote tabulating devices at a central counting location:

(1)(A) The poll workers shall place all ballots that have been cast in the container provided for that purpose.

(B) The container shall be sealed and delivered to the county board of election commissioners forthwith by the poll workers together with the unused, void, and defective ballots; and

(2) All proceedings at the counting location shall be under the direction of the county board of election commissioners with respect to all elections.

**History.** Acts 1977, No. 77, § 6; A.S.A. 1947, § 3-1805; Acts 1993, No. 511, § 3; 1997, No. 446, § 30; 2005, No. 2233, § 45; 2007, No. 835, § 8; 2009, No. 959, § 30.

**Amendments.** The 2007 amendment rewrote the section.

The 2009 amendment substituted “poll workers” for “election officials” in (1)(A)

and (1)(B); deleted (2)(B); redesignated the remaining subdivision of (2) accordingly; and deleted “at least two (2) election officials named by” following “direction of” in (2).

**7-5-615. Tabulation of votes — Defective ballots — Certification of returns.**

(a) The counting of votes by electronic vote tabulating devices at the courthouse or other central counting location shall be open to the public, and any candidate or political party may be present in person or by representative designated in writing pursuant to § 7-5-312 to view the counting.

(b) No person except those employed and authorized for that purpose shall touch any ballot or return.

(c) The election officials at the counting place and all persons operating the electronic vote tabulating devices shall take the same oath required by law for election officials before entering upon their duties.

(d) If any ballot is damaged or defective so that it cannot properly be counted by the electronic vote tabulating device, a true duplicate copy shall be made of the damaged ballot in the presence of tabulation election officials if the votes are tabulated at a central location. The duplicate shall be substituted for the damaged ballot. All duplicate ballots shall be clearly labeled “duplicate” and shall be counted in lieu of the damaged or defective ballot.

(e) The return printed by the electronic vote tabulating device, to which has been added the return of write-in, early, and absentee votes, shall constitute the official return of each polling site. All returns shall be certified by the election officials in charge of the tabulation thereof in the manner provided by law.

(f) Upon completion of the count, the returns shall be open to the public.

**History.** Acts 1977, No. 77, § 6; A.S.A. 1947, § 3-1805; Acts 1997, No. 446, § 31; 2003, No. 1154, § 5; 2005, No. 2233, § 46; 2007, No. 835, § 9.

**Amendments.** The 2007 amendment

substituted “Defective ballots” for “Defective vote cards” in the section heading; and substituted “polling site” for “precinct” in (e).

7-5-616. Penalty.

A person who violates this subchapter shall be subject to the same fine and imprisonment as provided by law for violating the comparable provisions of the laws of this state regarding voting by other voting methods.

**History.** Acts 2009, No. 1480, § 40.

**Publisher’s Notes.** The former § 7-5-616, concerning use of ultraviolet ink in

lieu of a black-out sticker, was repealed by Acts 1997, No. 446, § 32. The section was derived from Acts 1993, No. 1297, § 1.

SUBCHAPTER 7 — RETURNS AND CANVASS

SECTION.

- 7-5-701. Declaration of results — Certification, delivery, and custody of returns.
- 7-5-702. Preservation of ballots, stubs, certificates, and other election materials.
- 7-5-703. Votes for United States Congress — Tie vote.
- 7-5-704. Votes for legislative, judicial,

SECTION.

- and executive officers — Tie vote.
- 7-5-705. Votes for constitutional officers — Tie vote — Certificate of election.
- 7-5-706. Presentation of list of legislators elected.
- 7-5-707. Vote certification.

**Effective Dates.** Acts 1969, No. 465, Art. 13, § 10: approved Apr. 17, 1969. Emergency clause provided: “It is hereby found and declared by the General Assembly of the State of Arkansas that the present election laws are ancient and outdated in part and have caused and are causing much confusion and controversy, that there are particular problem areas in the present law which need immediate legislation in order to resolve same, that elections are and will continue to be held and conducted in this atmosphere of confusion and controversy until these problem areas are resolved and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in force and effect from and after its passage.”

Acts 2001, No. 1789, § 12: Emergency clause failed. Emergency clause provided: “It is found and determined by the General Assembly that Amendment 80 to the

Arkansas Constitution becomes effective on July 1, 2001; that this implements the nonpartisan election of justices and judges as mandated by Amendment 80; and that to effectively implement Amendment 80, this act should become effective on July 1, 2001. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective on July 1, 2001.”

Acts 2001, No. 1839, § 35: became law without governor’s signature. Approved Apr. 20, 2001. Emergency clause provided: “It is found and determined by the General Assembly that various provisions of the Arkansas Code relating to campaign financing and ethics are vague or otherwise in need of modification; that this act accomplishes those purposes; and that this act should go into effect as soon as possible so that those persons who are subject to the provisions of the various ethics and campaign finance statutes re-

ceive the benefit of the clarifications as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Gov-

ernor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 2233, § 48: Jan. 1, 2006.

### RESEARCH REFERENCES

**Am. Jur.** 26 Am. Jur. 2d, Elections, § 291 et seq.

**C.J.S.** 29 C.J.S., Elections, § 221 et seq.

### **7-5-701. Declaration of results — Certification, delivery, and custody of returns.**

(a)(1) No earlier than forty-eight (48) hours after the election and no later than the fifteenth calendar day after the election, the county board of election commissioners, from the certificates and ballots received from the several precincts, shall proceed to ascertain, declare, and certify the result of the election to the Secretary of State.

(2)(A) The county board shall declare preliminary and unofficial results of the election, including a statement of the number of outstanding absentee ballots of overseas voters, immediately after the count of the vote is complete and report the preliminary and unofficial results to the county clerk, who shall immediately transmit the results to the Secretary of State by the Internet website interface provided by the Secretary of State.

(B) If it is not possible for the clerk to transmit the results via the Internet website interface, then the clerk may transmit the results by facsimile transmission.

(3) Within nineteen (19) calendar days after any general, special, or school election, the county board shall deliver a certificate of election to the person having the highest number of legal votes for any county office.

(b) The county board shall also file in the office of the clerk of the county court a certificate setting forth in detail the result of the election.

(c)(1) No earlier than forty-eight (48) hours after the election and no later than the fifteenth calendar day after the election, the county board shall deposit certified copies of the abstracts of the returns of the election for members of Congress and for all executive, legislative, and judicial officers in the nearest post office on the most direct route to the seat of government and directed to the Secretary of State.

(2) The county board shall not receive compensation for election duties after the election until the election results have been certified and delivered to the Secretary of State.



(3) The Secretary of State shall file a complaint with the State Board of Election Commissioners pursuant to § 7-4-118 if the county board does not comply with subdivision (c)(1) of this section.

(d)(1) It shall at the same time enclose in a separate envelope and direct to the Speaker of the House of Representatives, in care of the Secretary of State, at the seat of government, a certified copy of the abstract of votes given for Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, and Attorney General.

(2) It is made the duty of the Secretary of State to safely keep the returns addressed to the Speaker of the House of Representatives until they shall be required for the purpose of ascertaining and declaring the result of the election as prescribed in Arkansas Constitution, Article 6, § 3.

**History.** Acts 1969, No. 465, Art. 8, § 1; § 1; 1995, No. 724, § 1; 1999, No. 1304, 1971, No. 261, § 14; A.S.A. 1947, § 3-801; § 1; 2001, No. 1475, § 1; 2003, No. 131, Acts 1993, No. 512, § 3; 1993, No. 966, § 1; 2005, No. 731, § 1; 2005, No. 895, § 1; 1995, No. 441, § 1; 1995, No. 723, § 1; 2005, No. 1677, § 5.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Election Law, 24 U. Ark. Little Rock L. Rev. 465.

Survey of Legislation, 2003 Arkansas General Assembly, Election Law, Transmittal of Election Results, 26 U. Ark. Little Rock L. Rev. 395.

## CASE NOTES

### ANALYSIS

Going Behind Returns.  
Number of Commissioners.

#### Going Behind Returns.

The canvassing board may not go behind the returns and purge the returns of illegal votes. *Pitts v. Stuckert*, 111 Ark. 388, 163 S.W. 1173 (1914) (decision under prior law).

### Number of Commissioners.

Certification of local option election returns by two commissioners instead of three, since one commissioner was away on personal business, did not invalidate certification. *Bonds v. Rogers*, 219 Ark. 319, 241 S.W.2d 371 (1951) (decision under prior law).

## 7-5-702. Preservation of ballots, stubs, certificates, and other election materials.

(a) After the election has been finally certified by the county board of election commissioners, the county board of election commissioners shall retain the custody of and safely keep in a sealed container appropriately marked in a secure location in the county courthouse or other county storage facility all ballots and certificates returned to it from the several precincts for a period of twenty (20) days, after which time the ballots and certificates shall be stored in a secure location in the county courthouse or other county storage facility for a period of two (2) years from the date of the election, unless the county board of election commissioners shall be sooner notified in writing that:

(1) The election of some person voted for at the election and declared to have been elected has been contested; or

(2) Criminal prosecution has begun before a tribunal of competent jurisdiction against any officer of election or person voting thereat for any fraud in the election.

(b) If the county board of election commissioners is notified as provided in subsection (a) of this section, then so many of the ballots and certificates as may relate to matters involved in the contest or any prosecution shall be preserved for use as evidence in the contest or prosecution.

(c) During the time the ballots may be retained or stored, the package containing them shall not be opened by anyone unless directed to do so by some competent tribunal before which an election contest or prosecution is pending in which the ballots are to be used as evidence.

(d) For a period of twenty (20) days, the county treasurer shall retain the custody of and safely keep all ballot stubs in a sealed container appropriately marked which are delivered to him or her from the several precincts, after which time they shall be stored unless an election contest has been filed or a criminal prosecution has been initiated in connection with the election.

(e) After a period of two (2) years, all marked ballots may be destroyed in the following manner:

(1) The county board of election commissioners shall enter an order directing the destruction of marked ballots;

(2) The county board of election commissioners shall make and retain a record of marked ballots destroyed; and

(3) The county board shall file the order and record pertaining to marked ballots and ballot stubs destroyed with the county clerk.

**History.** Acts 1969, No. 465, Art. 8, § 2; A.S.A. 1947, § 3-802; Acts 1987, No. 492, § 1; 1997, No. 446, § 33; 2005, No. 953, § 1; 2005, No. 2233, § 47; 2009, No. 959, § 31.

**Amendments.** The 2009 amendment

inserted "After the election has been finally certified by the county board of election commissioners" in (a); deleted (f); and made related and minor stylistic changes.

**Cross References.** Miscellaneous felonies — Penalties, § 7-1-104.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2005 Arkansas General As-

sembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.

## CASE NOTES

### ANALYSIS

Custody During Contest.  
Parol Proof.  
Trial Court Authority.

### Custody During Contest.

Where, in an election contest, the bal-

lots of a certain township were produced in evidence by the board of election commissioners, they were to remain in the custody of the court and in case of their production at a second trial by one of the election commissioners, no presumption of official regularity would be indulged. *Lovewell v. Bowen*, 75 Ark. 452, 88 S.W.

570 (1905) (decision under prior law).

**Parol Proof.**

Where the ballots of an election were kept by the election commissioners for six months and were then destroyed, no notice having been given to the commissioners to preserve them for a longer period, parol proof was not admissible thereafter to contradict the official returns by showing how the votes were cast at the election. *Condren v. Gibbs*, 94 Ark. 478, 127 S.W. 731 (1910) (decision under prior law).

**Trial Court Authority.**

A court having jurisdiction of an election contest may make orders for preserving the ballots and using them as evidence; and unless there is some abuse of the court's power in this respect, there is nothing for the Supreme Court to review. *Williams v. Buchanan*, 86 Ark. 259, 110 S.W. 1024 (1908) (decision under prior law).

**Cited:** *Parks v. Taylor*, 283 Ark. 486, 678 S.W.2d 766 (1984).

**7-5-703. Votes for United States Congress — Tie vote.**

(a) It shall be the duty of the Secretary of State, in the presence of the Governor, within thirty (30) days after the time allowed to make returns of election by the county board of election commissioners, or sooner, if all the returns have been received, to cast up and arrange the votes from the several counties, or such of them as may have made returns, for each person voted for as United States Senator or Representative.

(b) The Governor shall immediately thereafter issue his or her proclamation declaring the person having the greatest number of legal votes to be duly elected to represent this state in the Senate or House of Representatives of the United States Congress and shall grant a certificate thereof, under the seal of the state, to the person so elected.

(c) Should any two (2) or more persons have an equal number of votes, and a higher number than any other person, the names of the two (2) candidates receiving the highest number of votes for United States Senator or Representative shall be certified to a special runoff election which shall be held three (3) weeks from the day on which the general election is held. The special runoff election shall be conducted in the same manner as is now provided by law, and the election results shall be canvassed and certified in the manner provided by law.

**History.** Acts 1969, No. 465, Art. 8, 1947, §§ 3-803, 3-804; Acts 1997, No. 446, §§ 3, 4; 1971, No. 261, §§ 15, 16; A.S.A. § 34.

**7-5-704. Votes for legislative, judicial, and executive officers — Tie vote.**

(a) It shall be the duty of the Secretary of State, in the presence of the Governor, within thirty (30) days after the time allowed in this subchapter to make returns of elections by the county board of election commissioners, or sooner, if all the returns have been received, to cast up and arrange the votes from the several counties for each person who received votes for any legislative, judicial, or executive office, except the offices named in Arkansas Constitution, Article 6, § 3. The persons who have received the greatest number of legal votes for Justice of the



Supreme Court and Commissioner of State Lands, within the state; judges of the Court of Appeals and of the circuit courts, and prosecuting attorneys, in their respective districts or circuits; judges of the county and probate courts, circuit clerk, county clerk, sheriff, coroner, surveyor, and assessor, in their respective counties; and all other officers required by law, shall be commissioned by the Governor.

(b) If two (2) or more persons have an equal number of votes for the same office and a higher number than any other person, the names of the two (2) candidates receiving the highest number of votes for any legislative or executive office, except those offices named in Arkansas Constitution, Article 6, § 3, and constables, shall be certified to a special runoff election which shall be held three (3) weeks from the day on which the general election is held. The special runoff election shall be conducted in the same manner as is now provided by law, and the election results thereof shall be canvassed and certified in the manner provided by law.

(c) Subsection (b) of this section shall not apply to the offices of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, or district judge.

**History.** Acts 1969, No. 465, Art. 8, §§ 5, 6; 1971, No. 261, §§ 17, 18; A.S.A. 1947, §§ 3-805, 3-806; Acts 1993, No. 512, § 4; 1997, No. 446, § 35; 2001, No. 1789, § 5; 2009, No. 959, § 32.

**Amendments.** The 2009 amendment

deleted "immediately" preceding "commissioned by the Governor" in (a); deleted "judicial" following "legislative" in (b)(1); and made related and minor stylistic changes.

### CASE NOTES

#### **Constitutionality.**

Requirement previously set forth in this section providing for a special election in case no candidate received a majority of the votes cast in a particular race, contravened the plurality provision of Ark.

Const., Art. 6, § 3, relating to the election of executive officers, and was therefore void. *Rockefeller v. Matthews*, 249 Ark. 341, 459 S.W.2d 110 (1970) (decision prior to 1971 amendment).

### **7-5-705. Votes for constitutional officers — Tie vote — Certificate of election.**

(a) During the first week of the session after each election for Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, and Attorney General, and in the presence of both houses of the General Assembly, the Speaker of the House of Representatives shall open and publish the votes cast and given for each of the respective officers hereinbefore mentioned.

(b) The person having the greatest number of legal votes for each of the respective offices shall be declared duly elected thereto, but if two (2) or more shall be equal and highest in votes for the same office, one (1) of them shall be chosen by a joint vote of both houses of the General Assembly, and a majority of all the members elected shall be necessary to a choice.

(c) The President of the Senate and the Speaker of the House of Representatives shall make and deposit in the office of the Secretary of State a certificate declaring what person has been elected to any office named.

**History.** Acts 1969, No. 465, Art. 8, § 8; 1971, No. 261, § 19; A.S.A. 1947, § 3-808; Acts 1993, No. 512, § 5.

### CASE NOTES

#### **Conclusiveness.**

The declaration of the speaker as to the result of the vote for state constitutional offices is not necessarily the final conclusion, for a contest may be had thereafter

and it shall be settled by the joint vote of both houses in which meeting the president of the senate shall preside. *Rice v. Palmer*, 78 Ark. 432, 96 S.W. 396 (1906) (decision under prior law).

#### **7-5-706. Presentation of list of legislators elected.**

It shall be the duty of the Secretary of State, on the first day of each regular session of the General Assembly, to lay before each house a list of members elected in accordance with the returns in his or her office.

**History.** Acts 1969, No. 465, Art. 8, § 7; A.S.A. 1947, § 3-807.

#### **7-5-707. Vote certification.**

(a) For all state and federal elections, the county board of election commissioners shall transmit the certified results for each polling place to the county clerk, who shall immediately transmit the results to the Secretary of State through the Internet website interface provided by the Secretary of State.

(b) The Secretary of State may require a county board of election commissioners to submit additional election information as determined by the Secretary of State.

**History.** Acts 2001, No. 1396, § 1; 2003, No. 131, § 2; 2003, No. 994, § 13; 2005, No. 67, § 14; 2007, No. 559, § 5; 2009, No. 959, § 33; 2011, No. 1238, § 1.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, this section is set out above as amended by Acts 2003, No. 994. This section was also amended by Acts 2003, No. 131, § 2, to read as follows:

“Vote certification — Report. (a) At the time that the county board of election commissioners certifies the vote to the Secretary of State, the county board shall report to the State Board of Election Commissioners the total number of: (1) Ballots cast; (2) Ballots printed and delivered to the polls; (3) Challenged ballots that were disqualified; (4) Spoiled ballots; and (5)

Unused ballots.

“(b) Within thirty (30) calendar days after any election, the county board shall report to the state board the number of over-votes and under-votes cast in the election.

“(c)(1) Certified results for each polling place shall be entered and transmitted to the Secretary of State through the Internet website interface provided by the Secretary of State for all state and federal elections.

“(2) If it is not possible for the county board to transmit the results via the Internet website interface, then the county board may transmit the results by facsimile transmission.”

**Publisher’s Notes.** Acts 2011, No.

1238 became law without the Governor's signature.

**Amendments.** The 2009 amendment inserted (b)(10) and made related changes; and substituted "a statement ... county election commissioner" for "an affidavit, under the signature of all three (3)

commissioners or individually, with the state board in a form approved by the state board to the effect that all duties and responsibilities of the county election commissioner have been complied with" in (e).

The 2011 amendment rewrote (b) and deleted former (c) through (e).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Election Law, 24 U. Ark. Little Rock L. Rev. 465.

Survey of Legislation, 2003 Arkansas General Assembly, Election Law, Help America Vote Act, 26 U. Ark. Little Rock L. Rev. 398.

## SUBCHAPTER 8 — ELECTION CONTESTS

### SECTION.

- 7-5-801. Right of action — Procedure.
- 7-5-802. Circuit court proceedings.
- 7-5-803. Special judges for additional contests.
- 7-5-804. Trial — Appeal — Enforcement — Other laws superseded.
- 7-5-805. Contest of state legislative offices.
- 7-5-806. Contest of state constitutional executive offices.

### SECTION.

- 7-5-807. Election illegalities — Complaint — Grand jury investigation — Indictment — Trial.
- 7-5-808. Finding of guilt — Effect.
- 7-5-809. Determination of guilt after election — Effect.
- 7-5-810. Contest of election results — Time for appeal.

**Effective Dates.** Acts 1969, No. 465, Art. 13, § 10: approved Apr. 17, 1969. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the present election laws are ancient and outdated in part and have caused and are causing much confusion and controversy, that there are particular problem areas in the present law which need immediate

legislation in order to resolve same, that elections are and will continue to be held and conducted in this atmosphere of confusion and controversy until these problem areas are resolved and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in force and effect from and after its passage."

## RESEARCH REFERENCES

**Am. Jur.** 26 Am. Jur. 2d, Elections, § 316 et seq.

**C.J.S.** 29 C.J.S., Elections, § 245 et seq.

## CASE NOTES

### ANALYSIS

Construction.  
Constitutionality of Legislation.  
Definition.  
Local Option Liquor Election.

### Construction.

Statutes regulating primary election contests should receive liberal interpretation. *Robinson v. Knowlton*, 183 Ark. 1127, 40 S.W.2d 450 (1931) (decision under prior law).



**Constitutionality of Legislation.**

To allow declaratory judgment to declare legislation unconstitutional after an election by one whose interest is that of a spurned candidate would effectively subvert the election contest laws. *Riley v. City of Corning*, 294 Ark. 480, 743 S.W.2d 820 (1988).

**Definition.**

“Defendant” means the party who defends the suit when finally determined, whether in the circuit court or the Supreme Court, so that it applies equally to contestant and contestee. *Ferguson v.*

*Montgomery*, 148 Ark. 83, 229 S.W. 30 (1921) (decision under prior law).

**Local Option Liquor Election.**

Contest of the result of local option liquor election came under this subchapter and the contest should have been brought in circuit court instead of county court. *Henderson v. Anderson*, 251 Ark. 724, 475 S.W.2d 508 (1972).

**Cited:** *Adams v. Dixie School Dist.*, 264 Ark. 178, 570 S.W.2d 603 (1978); *Files v. Hill*, 268 Ark. 106, 594 S.W.2d 836 (1980); *Loyd v. Keathley*, 284 Ark. 391, 682 S.W.2d 739 (1985).

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**7-5-801. Right of action — Procedure.**

(a) A right of action is conferred on any candidate to contest the certification of nomination or the certificate of vote as made by the appropriate officials in any election.

(b) The action shall be brought in the circuit court of the county in which the certification of nomination or certificate of vote is made when a county or city or township office, including the office of county delegate or county committeeman, is involved, and except as provided in this subchapter, within any county in the circuit or district wherein any of the wrongful acts occurred when any circuit or district office is involved, and except as provided in this subchapter, in the Pulaski County Circuit Court when the office of United States Senator or any state office is involved. \*

(c) If there are two (2) or more counties in the district where the action is brought and when fraud is alleged in the complaint, answer, or cross-complaint, the circuit court may hear testimony in any county in the district.

(d) The complaint shall be verified by the affidavit of the contestant to the effect that he or she believes the statements to be true and shall be filed within twenty (20) days of the certification complained of.

(e) The complaint shall be answered within twenty (20) days.

**History.** Acts 1969, No. 465, Art. 10, § 1; A.S.A. 1947, § 3-1001.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Annual Survey of Caselaw, Election Law, 26 U. Ark. Little Rock L. Rev. 903.

## CASE NOTES

## ANALYSIS

Purpose.  
 Applicability.  
 Abatement or Mootness.  
 Challenge to Constitutionality.  
 Complaints.  
 —Amendments.  
 —Sufficiency.  
 —Time of Filing.  
 Eligibility to Contest.  
 Jurisdiction.  
 Legality of Votes.  
 Loyalty Oath.  
 Particular Offices.  
 Parties.  
 Rules of Procedure.  
 Service of Process.  
 Verification by Affidavit.  
 Writ of Prohibition.

**Purpose.**

The right to contest an election is a statutory proceeding, the purpose of which is to furnish a summary remedy and to secure a speedy trial. *McCastlain v. Elmore*, 340 Ark. 365, 10 S.W.3d 835 (2000).

**Applicability.**

This section is directed toward elections involving candidates, and not toward local option elections. *Garrett v. Andrews*, 294 Ark. 160, 741 S.W.2d 257 (1987), rehearing denied, 294 Ark. 160, 744 S.W.2d 386 (1988), cert. denied, *Andrews v. Adams*, 487 U.S. 1219, 108 S. Ct. 2873, 101 L. Ed. 2d 908 (1988).

This section only applies to an action by a candidate to contest the certification of a nomination or of the vote following an election; it does not apply to an action brought to challenge to the qualifications of a candidate for public office. *Jacobs v. Yates*, 342 Ark. 243, 27 S.W.3d 734 (2000).

This section provides a right of action to contest the certification of the nomination or the certificate of vote after an election; thus, the 20-day period for such an action is not applicable to an action brought before a primary election to determine the eligibility of a candidate. *Valley v. Bogard*, 342 Ark. 336, 28 S.W.3d 269 (2000).

Trial court erred in dismissing a Democratic candidate's challenge to a Republican candidate's residency requirements as

the complaint was specifically authorized by § 7-5-207(b) and this section did not apply. *Tumey v. Daniels*, 359 Ark. 256, 196 S.W.3d 479 (2004).

Voter's filing of election contest in Pulaski County was in error as jurisdiction under subsection (b) of this section was in Phillips County, as that was the county of District 16 where wrongful acts were alleged to have occurred; there was no jurisdiction under the statute to hear a post-election contest in Pulaski County. *Simes v. Crumbly*, 368 Ark. 1, 242 S.W.3d 610 (2006).

In an election contest, the circuit court erred in dismissing a complaint by a candidate for failure to join the Secretary of State as a party; the complaint was properly filed in the correct county and was timely filed, timely served, and timely answered by the electoral winner; although the specific procedure was provided by this section, it did not supplant the rules of civil procedure. *Baker v. Rogers*, 368 Ark. 134, 243 S.W.3d 911 (2006).

Appellee candidate's petition for writ of mandamus and declaratory judgment, which sought to have appellant candidate declared ineligible, was dismissed because (1) appellee filed the petition postelection rather than preelection, (2) the petition did not institute a postelection contest under this section because appellee alleged a right to a postelection challenge of appellant's eligibility, and the parties stipulated that appellant obtained the most votes; and (3) a circuit court was without jurisdiction to hear a postelection challenge to eligibility, and the remedy for usurpation of office lay with the state under quo warranto. *Zollicoffer v. Post*, 371 Ark. 263, 265 S.W.3d 114 (2007), rehearing denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 641 (Nov. 15, 2007).

School district residents attempted to state a cause of action in illegal exaction, Ark. Const., Art. 16, § 13, and the circuit court erred in finding that they alleged a cause of action contesting the school district election, § 6-14-116; the circuit court had to determine whether the residents had stated a cause of action in illegal exaction on remand. *Dollarway Patrons for Better Sch. v. Dollarway Sch. Dist.*, 374 Ark. 92, 286 S.W.3d 123 (2008).



**Abatement or Mootness.**

The right of a contestant to have the action determined does not abate or become moot by the act of the contestee in resigning from the office. *Cain v. Carl-Lee*, 171 Ark. 155, 283 S.W. 365 (1926) (decision under prior law).

In election contest suit where unsuccessful candidate in preferential primary contested certification of vote and certification of nomination, his cause did not become moot after he was elected alderman in general election. *Porter v. Hesselbein*, 235 Ark. 379, 360 S.W.2d 499 (1962) (decision under prior law).

**Challenge to Constitutionality.**

Person who is aggrieved by a statute he considers to be unconstitutional may not challenge it by declaratory judgment, in lieu of special statutory procedures designed to determine the issue in the election contest which is the context. *Riley v. City of Corning*, 294 Ark. 480, 743 S.W.2d 820 (1988).

**Complaints.**

Circuit court abused its discretion in ruling that the claimant was attempting to amend his complaint with a new cause of action by offering proof of absentee-ballot irregularities under the miscellaneous other category in the claimant's exhibit, because the claimant was perfectly within his rights to make his allegations of absentee-ballot irregularities for nursing home residents, in particular, more definite and certain by offering proof of those violations. The claimant alleged a valid cause of action and set out a prima facie case with sufficient facts to give reasonable information as to the grounds of the contest, and he proffered absentee applications and voter statements to show why and how the ballots were illegal. *Willis v. Crumbly*, 371 Ark. 517, 268 S.W.3d 288 (2007).

Circuit court did not abuse its discretion by denying a candidate's motion for a writ of mandamus, injunctive, and declaratory relief, because the candidate did not timely challenge the Democratic Party of Arkansas' failure to certify him for placement on the general-election ballot within twenty days, as required by this section. *Dobbins v. Democratic Party of Ark.*, 374 Ark. 496, 288 S.W.3d 639 (2008).

**—Amendments.**

The complaint filed in a contest cannot be amended to state a new cause of action where the time for bringing the action has expired. *Bland v. Benton*, 171 Ark. 805, 286 S.W. 976 (1926) (decision under prior law); *Cain v. McGregor*, 182 Ark. 633, 32 S.W.2d 319 (1930) (decision under prior law); *Winton v. Irby*, 189 Ark. 906, 75 S.W.2d 656 (1934) (decision under prior law); *Martin v. Gray*, 193 Ark. 32, 97 S.W.2d 439 (1936) (decision under prior law).

A contestant may, after expiration of the time for filing a contest, amend his original complaint so as to make it more definite and certain. *Robinson v. Knowlton*, 183 Ark. 1127, 40 S.W.2d 450 (1931) (decision under prior law); *Winton v. Irby*, 189 Ark. 906, 75 S.W.2d 656 (1934) (decision under prior law).

Amendments could be made after the period specified for filing complaint to perfect causes of action defectively stated within the filing period. *Hailey v. Barker*, 193 Ark. 101, 97 S.W.2d 923 (1936) (decision under prior law).

Filing of affidavit within specified filing period is jurisdictional and if the affidavit is insufficient at the close of the period, contestant will not be permitted thereafter to amend it so as to confer jurisdiction upon trial court. *Thompson v. Self*, 197 Ark. 70, 122 S.W.2d 182 (1938); *Murphy v. Trimble*, 200 Ark. 1173, 143 S.W.2d 534 (1940) (decisions under prior law).

Where complaint and first amendment did not state cause of action, they could not be corrected by second amendment which was not filed within 20 days after certification. *Wilson v. Ellis*, 230 Ark. 775, 324 S.W.2d 513 (1959) (decision under prior law).

Refusal of court to permit amendment of complaint after expiration of 20 days was not error where original complaint seeking to contest election did not state cause of action. *Wheeler v. Jones*, 239 Ark. 455, 390 S.W.2d 129 (1965), cert. denied, 382 U.S. 926, 86 S. Ct. 313 (1965) (decision under prior law).

Permission to amend properly denied where allegations of petition to amend were insufficient. *Simonetti v. Brick*, 266 Ark. 551, 587 S.W.2d 16 (1979).

Where election contestant failed to allege facts necessary to contest the election and have herself declared the person with



the most votes, it was too late on appeal for her to amend the complaint. *Rubens v. Hodges*, 310 Ark. 451, 837 S.W.2d 465 (1992).

### —Sufficiency.

Allegations of complaint held insufficient. *Crawford v. Harmon*, 149 Ark. 343, 232 S.W. 427 (1921) (decision under prior law); *Hill v. Williams*, 165 Ark. 421, 264 S.W. 964 (1924) (decision under prior law); *McClendon v. McKeown*, 230 Ark. 521, 323 S.W.2d 542 (1959) (decision under prior law); *Wilson v. Ellis*, 230 Ark. 775, 324 S.W.2d 513 (1959) (decision under prior law); *Rubens v. Hodges*, 310 Ark. 451, 837 S.W.2d 465 (1992).

An election contest is an adversary proceeding between a candidate not certified and a nominee who was certified if there were only two candidates for the office involved. The pleadings in an election contest case should be sufficiently specific to give reasonable information as to the grounds of contest. *McClendon v. McKeown*, 230 Ark. 521, 323 S.W.2d 542 (1959) (decision under prior law).

It is necessary to allege facts and not conclusions. *Wilson v. Ellis*, 230 Ark. 775, 324 S.W.2d 513 (1959) (decision under prior law).

A duly qualified candidate for a municipal office can properly contest an election, where under the facts, although he cannot honestly allege that he received a sufficient number of votes to entitle him to certificate of nomination, he can allege that when the election returns are purged of the enumerated illegal votes it will be shown that such candidate should be certified as a candidate in the run-off or general primary election. *Porter v. Hesselbein*, 235 Ark. 379, 360 S.W.2d 499 (1962) (decision under prior law).

Appellee's complaint regarding illegal votes complied with the requirements established for stating a cause of action under *Wheeler and Womack*, where: (1) he named all nine voters in question; (2) he included the number of votes received by each candidate so that a subtraction of the illegally cast votes would show that the contestant received more votes than appellant; (3) appellee averred that the election commission certified appellant as the winner with a vote total of 227 to 219 for appellee for a difference of eight votes; and (4) he stated that the disqualification of

the named voters' votes was sufficient to reverse the election results and certify him the true winner of said election. *Tate-Smith v. Cupples*, 355 Ark. 230, 134 S.W.3d 535 (2003).

### —Time of Filing.

Provision requiring the contest to be filed within certain number of days of the certification is mandatory and jurisdictional. *Gower v. Johnson*, 173 Ark. 120, 292 S.W. 382 (1927); *Moore v. Childers*, 186 Ark. 563, 54 S.W.2d 409 (1932) (decisions under prior law).

Filing held untimely. *Hays v. Harris*, 188 Ark. 354, 65 S.W.2d 526 (1933) (decision under prior law); *Denney v. Hankins*, 212 Ark. 618, 206 S.W.2d 968 (1947) (decision under prior law); *Buffington v. Carson*, 219 Ark. 804, 244 S.W.2d 954 (1952) (decision under prior law).

Filing held timely. *Matthews v. Warfield*, 201 Ark. 296, 144 S.W.2d 22 (1940) (decision under prior law).

Filing period held not applicable to appeal from circuit court judgment. *Vance v. Johnson*, 238 Ark. 1009, 386 S.W.2d 240 (1965) (decision under prior law).

Where the defeated candidates filed a complaint alleging the winning candidates were ineligible, the pleadings, in effect, showed it was an election contest and was deficient when the complaint showed on its face it was not filed within the statutory time following certification of election. *Gay v. Brooks*, 251 Ark. 565, 473 S.W.2d 441 (1971).

Because no-one contested nominee's certification of nomination or certificate of vote within the twenty-day period provided under this section, the nominee was the certified Democratic nominee for the district position before and at the time he withdrew his nomination, leaving a vacancy. *Tittle v. Woodruff*, 322 Ark. 153, 907 S.W.2d 734 (1995).

Where a candidate timely filed a complaint contesting the certification of election results but filed his verifying affidavit four days after the deadline for the complaint, the action was properly dismissed for lack of subject matter jurisdiction; the statutory language setting the deadline for filing the complaint is unambiguous and the deadline itself is mandatory and jurisdictional. *Willis v. King*, 352 Ark. 55, 98 S.W.3d 427 (2003).

Where candidate filed a petition for qualification as an independent candidate

for the Arkansas House of Representatives, was notified that his petition was not certified in a letter from the Elections Division of the Secretary of State dated May 2, 2006, but the candidate did not file his verified complaint against the Arkansas Secretary of State until May 31, 2006, which was nine days late, the circuit court did not have subject matter jurisdiction to hear the complaint. *Daniels v. Weaver*, 367 Ark. 327, 240 S.W.3d 95 (2006).

### **Eligibility to Contest.**

Only one claiming to be the nominee at a primary election may contest the election. *Storey v. Looney*, 165 Ark. 455, 265 S.W. 51 (1924) (decision under prior law).

There is no requirement that a candidate, in order to contest an election, must not himself have been guilty of engaging in corrupt practices. *Cain v. Carl-Lee*, 169 Ark. 887, 277 S.W. 551 (1925) (decision under prior law).

The right of contest is confined to the candidate at the primary election and to one who claims to be the rightful nominee. *Stewart v. Hunnicutt*, 178 Ark. 829, 12 S.W.2d 418 (1929) (decision under prior law).

Loser in primary election was eligible to contest primary election, though chairman of party extracted pollbooks from ballot box and handed same to loser, as ballots themselves were not disturbed. *Ptak v. Jameson*, 215 Ark. 292, 220 S.W.2d 592 (1949) (decision under prior law).

The right of contest is conferred on any candidate with the result that anyone who has been allowed to participate in a primary election as a candidate need not establish anew his qualifications to be a candidate unless they are affirmatively questioned. *Gunter v. Fletcher*, 217 Ark. 800, 233 S.W.2d 242 (1950) (decision under prior law).

Law providing for a preferential primary election gave as a matter of public policy the right to contest that election upon the proper allegations of entitlement to be certified as a candidate in the run-off or general primary election. *Porter v. Hesselbein*, 235 Ark. 379, 360 S.W.2d 499 (1962) (decision under prior law).

There is no authority granting the electorate in general a right to challenge the candidacy of a party nominee for failure of the nominating party to enforce a party rule; the party, in its discretion, may

waive such requirements subject only to a timely challenge by a candidate or a person with such a relationship with the political party so as to confer standing to challenge the party's action or inaction. *Baker v. Jacobs*, 303 Ark. 460, 798 S.W.2d 63 (1990).

The right to contest an election is limited to one who claims to be the rightful winner of the contest, and that person must plead that he or she received the majority of the votes. *Rubens v. Hodges*, 310 Ark. 451, 837 S.W.2d 465 (1992).

This section provides a private, post-election right to challenge an election by allowing a candidate to contest certification by the county board of election commissions; however, the statute was not applicable where neither of the residents who brought the action were candidates and eligibility was challenged, rather than certification of a winner, such that the trial court was without jurisdiction to hear the action. *Pederson v. Stracener*, 354 Ark. 716, 128 S.W.3d 818 (2003).

### **Jurisdiction.**

The circuit court had jurisdiction to try contests of election for offices of mayor and of marshal. *Payne v. Rittman*, 66 Ark. 201, 49 S.W. 814 (1899); *Whittaker v. Watson*, 68 Ark. 555, 60 S.W. 652 (1901) (decisions under prior law).

The General Assembly may confer on the circuit court original jurisdiction to try contests. *Sumpster v. Duffie*, 80 Ark. 369, 97 S.W. 435 (1906) (decision under prior law).

In a contest of the election of a member of a county board of education or member of a school district board of directors, the sole forum was the circuit court of the county wherein the contested office existed and its jurisdiction was invoked even in the absence of notice to the contestee where the statutory procedures of § 6-14-116 and law providing procedure for election contests were complied with. *Kirk v. Roach*, 226 Ark. 799, 294 S.W.2d 335 (1956) (decision under prior law).

Circuit court had jurisdiction of election contest for county board of education although summons was not issued and served on defendant, where notice was served on defendant under election contests law and he entered appearance and never questioned sufficiency of service before or during trial. *Bradley v. Jones*,



227 Ark. 574, 300 S.W.2d 1 (1957) (decision under prior law).

The chancery court did not have jurisdiction to issue an injunction ordering the Alcoholic Beverage Control Board to cease prohibiting wholesalers from delivering or selling liquor in a precinct voted dry, since election contests are the exclusive domain of the circuit court. *ABC Bd. v. Munson*, 287 Ark. 53, 696 S.W.2d 720 (1985).

Where the complaint failed to state sufficient facts for the trial court to determine that jurisdiction was properly alleged, the trial court properly dismissed the complaint for lack of jurisdiction. *King v. Whitfield*, 339 Ark. 176, 5 S.W.3d 21 (1999).

Trial court had jurisdiction over the election contest and jurisdiction was not subsequently erased by the election, because the action was filed pre-election. *Oliver v. Phillips*, 375 Ark. 287, 290 S.W.3d 11 (2008).

### **Legality of Votes.**

The real inquiry upon a contest is whether the contestant or the respondent received the highest number of legal votes, and it is not confined to the ground specified in the notice of contest. The respondent may, without any cross contest, call in question the validity of the votes cast for the contestant, either in the township specified in the notice or any other township in the county. *Govan v. Jackson*, 32 Ark. 553 (1877) (decision under prior law).

The ineligibility of a party elected to office does not render the votes cast for him illegal, nor give the election to his competitor next highest in the poll. *Swepston v. Barton*, 39 Ark. 549 (1882) (decision under prior law).

Refusing legal or receiving illegal votes will not affect the election unless they were sufficient in number to change the majority. *Swepston v. Barton*, 39 Ark. 549 (1882) (decision under prior law).

Circuit court erred to the extent that it based its decision to grant the dismissal on the failure of the claimant to prove specifically how each challenged voter voted, because without question, the claimant should not have been required to present tracing evidence of how each challenged voter voted when he was foreclosed from doing so by Ark. Const. Amend. 81. *Willis v. Crumbly*, 371 Ark. 517, 268 S.W.3d 288 (2007).

### **Loyalty Oath.**

Whether a political party's rules dictate a loyalty oath, whether the loyalty oath requirement may or may not be waived, and whether certification or decertification results from a nominee's failure to execute a loyalty oath are matters generally left to the political party; however, an exception to this rule is provided for in this section, which confers a right of action on any candidate to contest the certification of a nomination within twenty (20) days of the certification complained of. *Baker v. Jacobs*, 303 Ark. 460, 798 S.W.2d 63 (1990).

### **Particular Offices.**

Township road overseer was "township officer." *Condren v. Gibbs*, 94 Ark. 478, 127 S.W. 731 (1910) (decision under prior law).

School officers are county officers. *Ferguson v. Walchansky*, 133 Ark. 516, 202 S.W. 826 (1918) (decision under prior law).

The prosecuting attorney is not a state officer within law, requiring contests for nomination to state offices to be in Pulaski County. *Morrow v. Strait*, 186 Ark. 384, 53 S.W.2d 857 (1932) (decision under prior law).

Candidate's post-election challenge to a state senate runoff election was properly brought within the circuit or district in which alleged voter fraud occurred; further, the Secretary of State and the State Democratic Committee were not indispensable parties for complete relief under Ark. R. Civ. P. 19 because the office of state senator was not a "state office" as that term had been differentiated in §§ 7-7-401 and 7-5-804, and Ark. Const. art. 5, §§ 3 and 4. *Willis v. Crumbly*, 368 Ark. 5, 242 S.W.3d 600 (2006).

### **Parties.**

The party claiming the office and the state may join as plaintiffs against another in possession of the office. *Whittaker v. Watson*, 68 Ark. 555, 60 S.W. 652 (1901) (decision under prior law).

In an election contest, as distinguished from an action seeking to void an election, the election commission is not the proper party defendant, although it is a proper nominal defendant because the commission's function is to promote fair elections, to act in a disinterested manner in disputes between candidates or their representatives, and to take neither side in a



contest. *Rubens v. Hodges*, 310 Ark. 451, 837 S.W.2d 465 (1992).

There is no statute governing who is the proper party defendant in an election contest situation where a candidate dies before an election, and the deceased candidate prevails in the election, and the results of the election are contested by another candidate. *Rubens v. Hodges*, 310 Ark. 451, 837 S.W.2d 465 (1992).

### **Rules of Procedure.**

Election contests are special proceedings and, therefore, the rules of civil procedure do not apply, in accordance with A.R.C.P. 81, which exempts those instances where a statute specifically provides a different procedure, in which event the procedure so specified shall apply. *Rubens v. Hodges*, 310 Ark. 451, 837 S.W.2d 465 (1992).

Because election contests are special proceedings, the rules of civil procedure do not apply. *McCastlain v. Elmore*, 340 Ark. 365, 10 S.W.3d 835 (2000).

Where candidate filed a petition for qualification as an independent candidate for the office of Arkansas House of Representatives and his petition was denied because it did not contain the required number of verified signatures, the candidate erred by filing a civil rights action against the Arkansas Secretary of State in the Phillips County Circuit Court; subsection (b) of this section required the suit to be filed in Pulaski County, Arkansas. *Daniels v. Weaver*, 367 Ark. 327, 240 S.W.3d 95 (2006).

In an election contest brought under this section, the candidate still had to prove her allegations of voting irregularities, much as a plaintiff seeking a default judgment has to prove damages under Ark. R. Civ. P. 55, even though Rule 55 did not apply where the statute provided rights, remedies, and procedures. *Baker v. Rogers*, 368 Ark. 134, 243 S.W.3d 911 (2006).

Where this section provided statutory rights and remedies for election contests that differed from civil procedures rules, pursuant to Ark. R. Civ. P. 81, neither Ark. R. Civ. P. 12 nor any other rule of civil procedure applied, and the electoral winner and Carroll County Board of Commissioners were required to file answers within 20 days after the candidate filed her complaint; thus, because no answer

was ever filed, dismissal of the complaint for lack of a necessary party was improper. *Baker v. Rogers*, 368 Ark. 134, 243 S.W.3d 911 (2006).

### **Service of Process.**

Requirement of service held to be waived. *Wilson v. Luck*, 201 Ark. 594, 146 S.W.2d 696 (1941) (decision under prior law).

### **Verification by Affidavit.**

Affidavits are jurisdictional and must be filed within the time specified. *Logan v. Russell*, 136 Ark. 217, 206 S.W. 131 (1918) (decision under prior law); *McLain v. Fish*, 159 Ark. 199, 251 S.W. 686 (1923) (decision under prior law); *Culpepper v. Mathews*, 167 Ark. 253, 267 S.W. 773 (1925) (decision under prior law); *Kirk v. Hartlieb*, 193 Ark. 37, 97 S.W.2d 434 (1936) (decision under prior law).

It was error to dismiss a complaint on the grounds that the affidavit failed to state that the affiants were of the same political party with contestant. *Ferguson v. Montgomery*, 148 Ark. 83, 229 S.W. 30 (1921) (decision under prior law).

Affidavits cannot be made before a notary public who has moved from the county in which the affidavits are made. *Lanier v. Norfleet*, 156 Ark. 216, 245 S.W. 498 (1922) (decision under prior law).

Where signatures were obtained and thereafter the circuit clerk signed his name to the jurat without alleged affiants appearing before him, affidavit was insufficient. *Kirk v. Hartlieb*, 193 Ark. 37, 97 S.W.2d 434 (1936) (decision under prior law).

A supporting affidavit attached to the complaint was insufficient where the signatures were not affixed in the personal presence of the officer administering the oath. *Thompson v. Self*, 197 Ark. 70, 122 S.W.2d 182 (1938) (decision under prior law).

The right to question the sufficiency of affidavit, though it may appear sufficient on its face, is given the contestee. *Thompson v. Self*, 197 Ark. 70, 122 S.W.2d 182 (1938); *Murphy v. Trimble*, 200 Ark. 1173, 143 S.W.2d 534 (1940) (decisions under prior law).

Before Supreme Court can determine the legal effect of testimony regarding manner of signing and acknowledging verification, trial court should determine

whether affiant after signing affidavit failed in the presence of the clerk to assert his belief in the truthfulness of what the paper contained. *Thomas v. Hawkins*, 217 Ark. 787, 233 S.W.2d 247 (1950) (decision under prior law).

In contest of election suit, document styled "Answer and Cross Complaint" did not require verification, being nothing more than an answer asserting defenses to the complaint. *Edwards v. Williams*, 234 Ark. 1113, 356 S.W.2d 629 (1962) (decision under prior law).

There is no requirement that the verification of a complaint of persons contesting an election must be based upon contestants' personal knowledge of facts, rather than belief induced by reports of investigators. *Reed v. Baker*, 254 Ark. 631, 495 S.W.2d 849 (1973) (decision under prior law).

### **Writ of Prohibition.**

Court had no jurisdiction under election contest law over petition for writ of prohibition in action concerning wrongful ouster from office subsequent to election. *Foster v. Ponder*, 235 Ark. 660, 361 S.W.2d 538 (1962).

**Cited:** *ABC Div. v. Barnett*, 285 Ark. 189, 685 S.W.2d 511 (1985); *Lawson v. St. Francis County Election Comm'n*, 309 Ark. 135, 827 S.W.2d 159 (1992); *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993); *City of Springdale v. Town of Bethel Heights*, 311 Ark. 497, 845 S.W.2d 1 (1993); *Pederson v. Stracener*, 354 Ark. 716, 128 S.W.3d 818 (2003); *Hill v. Carter*, 357 Ark. 597, 184 S.W.3d 431 (2004).

## **7-5-802. Circuit court proceedings.**

(a) If the complaint is sufficiently definite to make a prima facie case, unless the circuit court in which it is filed is in session or is to convene within thirty (30) days, the judge shall call a special term which shall possess the powers of a court convened in a regular term, and shall proceed at once to hear the case. The session of the special term to hear these cases shall not interfere with the validity of other courts proceeding at the same time in the circuit.

(b) If the case comes in regular term, it shall be given precedence and be speedily determined. The judge may adjourn other courts in order to hear these cases and may call another judge in exchange to sit in other courts or vacate the bench in other courts and cause a special judge to be elected to hold the court.

**History.** Acts 1969, No. 465, Art. 10, § 2; A.S.A. 1947, § 3-1002.

## **CASE NOTES**

### **ANALYSIS**

Amendments to Complaint.  
Refusal of Continuance.

### **Amendments to Complaint.**

Where a complaint fails to allege sufficient facts to state a cause of action in an election contest, it may not be subsequently amended by pointing to facts outside the complaint after the time for contesting the election has expired.

*McCastlain v. Elmore*, 340 Ark. 365, 10 S.W.3d 835 (2000).

### **Refusal of Continuance.**

An election contestant who challenged the way the election commission counted certain write-in ballots was not denied his substantial rights when the court, in making its speedy determination, refused to permit him continuances and time for discovery, since the court did permit both parties access to the write-in ballots upon

which the contest was focused. Cartwright v. Carney, 286 Ark. 121, 690 S.W.2d 716 (1985). **Cited:** Willis v. King, 352 Ark. 55, 98 S.W.3d 427 (2003).

### **7-5-803. Special judges for additional contests.**

(a) In the event that there are more election contests brought under this section than the circuit court judge can dispose of prior to ten (10) days before any election to be held, either of the parties to the contest may so report to the circuit judge in vacation or otherwise, who shall have full and complete authority to appoint an attorney with the qualifications of circuit judge to hear any contest and render a final judgment in such contest.

(b) The circuit judge shall appoint as special judge any attorney named by a committee of three (3) qualified electors of the county in which the contest is pending, one (1) to be named by the contestant, one (1) to be named by the contestee, and the third to be named by those two (2) committee members. In the event that the first two (2) committee members do not agree within five (5) days on the third member, then the third member shall be chosen by lot from the respective choices of the two committee members.

(c) All proceedings shall be conducted as in the case of any regular judge trying any such case, including the right of appeal. The judge so appointed shall have full power and authority in the trial of election contests in all respects as are now conferred by the Arkansas Constitution upon circuit judges in this state. The judgment rendered by the attorney so appointed shall be binding with full force and effect as if the regular circuit judge had heard the cause.

(d) In the appointment of the attorney, the circuit judge shall not be confined in the selection of the attorney to the judicial circuit in which the contest is pending. However, the hearing of the contest shall be had in the county in which the contest has been filed.

**History.** Acts 1969, No. 465, Art. 10, § 3; A.S.A. 1947, § 3-1003.

### **CASE NOTES**

**Cited:** Loyd v. Keathley, 284 Ark. 391, 682 S.W.2d 739 (1985).

### **7-5-804. Trial — Appeal — Enforcement — Other laws superseded.**

(a) The election contest shall be tried by the circuit judge in open court without a jury.

(b) An appeal may be taken from the judgment. However, the appeal shall not operate as a supersedeas by judicial order or otherwise and the judgment of the circuit court shall be obeyed by officeholders, political committees and their officers, and all election officials, until



reversed. It shall be the duty of the Supreme Court to advance the hearing of any such appeal.

(c) The circuit court or, when necessary, the circuit judge in vacation shall enforce by mandamus to the officers of political parties and election officials, or both, or the Secretary of State the proper certification and proper ballot in accordance with the judgment of the court and shall punish the failure of any such officers to obey the mandamus by imprisonment in the county jail.

(d) Except as provided in this subchapter, all laws pertaining to general and special elections or rules of political organizations regarding primary elections providing for contest before political conventions or committees, other than the proceedings provided in this subchapter, shall be of no further force or effect.

**History.** Acts 1969, No. 465, Art. 10, § 4; A.S.A. 1947, § 3-1004; Acts 1997, No. 446, § 36.

## CASE NOTES

### ANALYSIS

Applicability.

Admissions.

Dismissal.

Evidence.

—Burden of Proof.

—Proving Election Results.

—Self-Incrimination.

—Sufficiency.

—Voter Testimony.

Findings.

Laws Superseded.

### Applicability.

Former statute applied not to the first trial only, but to a subsequent trial after appeal and reversal. *Cain v. Robertson*, 168 Ark. 751, 271 S.W. 336 (1925) (decision under prior law).

Candidate's post-election challenge to a state senate runoff election was properly brought within the circuit or district in which alleged voter fraud occurred; further, the Secretary of State and the State Democratic Committee were not indispensable parties for complete relief under Ark. R. Civ. P. 19 because the office of state senator was not a "state office" as that term had been differentiated in §§ 7-7-401 and 7-5-804, and Ark. Const. art. 5, §§ 3 and 4. *Willis v. Crumbly*, 368 Ark. 5, 242 S.W.3d 600 (2006).

### Admissions.

Contestant's admission at the trial that another candidate who was not a party received more votes according to the returns than contestant warranted dismissal of his complaint. *Stewart v. Hunnicutt*, 178 Ark. 829, 12 S.W.2d 418 (1929) (decision under prior law).

### Dismissal.

Because an election contest is a special proceeding where the legislature has expressly provided for expedited proceedings, it cannot be dismissed voluntarily or without prejudice; for if it was, it would seriously disrupt the administration of government and would effectively subvert the time limitations established by the legislature. *McCastlain v. Elmore*, 340 Ark. 365, 10 S.W.3d 835 (2000).

### Evidence.

The rules of evidence in election contests are the same as those in suits over property rights. *Condren v. Gibbs*, 94 Ark. 478, 127 S.W. 731 (1910) (decision under prior law).

### —Burden of Proof.

The burden of proof is upon the party who seeks to set aside the returns. *Powell v. Holman*, 50 Ark. 85, 6 S.W. 505 (1887) (decision under prior law).

Where the voter is registered and his name accepted by the election officers and

the evidence is of equal weight as to the time he became of age, there is a presumption that he is a legally qualified voter and the burden is on the contestant to rebut this presumption. *Letchworth v. Flinn*, 108 Ark. 301, 157 S.W. 402 (1913) (decision under prior law).

#### —Proving Election Results.

Pollbooks and certificates of the election officers are prima facie evidence of results of an election. *Patton v. Coates*, 41 Ark. 111 (1883) (decision under prior law).

If the ballots, tally sheets, and pollbooks are destroyed, lost, or stolen, secondary evidence is admissible, and spectators who were present at the count are competent witnesses in such a case. *Dixon v. Orr*, 49 Ark. 238, 4 S.W. 774 (1887) (decision under prior law).

If the election returns are discredited, other proof must be furnished as to how the votes were cast. *Rhodes v. Driver*, 69 Ark. 501, 64 S.W. 272 (1901) (decision under prior law).

Though the official returns of an election are not conclusive, they are prima facie evidence of the result and will stand until they are discredited by satisfactory evidence showing that they have not been preserved in the manner prescribed by law or have been tampered with or falsified. *Condren v. Gibbs*, 94 Ark. 478, 127 S.W. 731 (1910) (decision under prior law).

#### —Self-Incrimination.

In trials of contested elections and in proceedings for the investigation of elections, no person shall be permitted to withhold his testimony on the ground that it may incriminate him, or subject him to public infamy. However, the testimony shall not be used against him in any judicial proceeding, except for perjury in giving the testimony. Ark. Const., Art. 3, § 9. *Freeman v. Lazarus*, 61 Ark. 247, 32 S.W. 680 (1895); *Aven v. Wilson*, 61 Ark. 287, 32 S.W. 1074 (1895); *Payne v. Rittman*, 66 Ark. 201, 49 S.W. 814 (1899); *Whittaker v. Watson*, 68 Ark. 555, 60 S.W. 652 (1901); *Rhodes v. Driver*, 69 Ark. 501, 64 S.W. 272 (1901) (decisions under prior law).

#### —Sufficiency.

Evidence sufficient to show fraudulent conduct by election judges. *Williams v. Buchanan*, 86 Ark. 259, 110 S.W. 1024 (1908) (decision under prior law).

Where the contestant failed to prove for whom a single challenged voter cast his vote, judgment was properly rendered for the contestee. *Black v. Jones*, 208 Ark. 1011, 188 S.W.2d 626 (1945) (decision under prior law).

#### —Voter Testimony.

Declarations of voters are not competent to show that by reason of age or residence they were not qualified voters. *Rucks v. Renfrow*, 54 Ark. 409, 16 S.W. 6 (1891) (decision under prior law).

In an election contest, a voter may contradict his ballot if he did not prepare it himself and it was prepared contrary to the statute authorizing judges of an election to prepare ballots for illiterate voters. *Freeman v. Lazarus*, 61 Ark. 247, 32 S.W. 680 (1895) (decision under prior law).

Where question arose as to the meaning of the stipulation concerning testimony of student voters, trial court erred in refusing to allow the plaintiff to examine any of the balance of the students, since parties differed as to meaning of stipulation. *Ptak v. Jameson*, 215 Ark. 292, 220 S.W.2d 592 (1949) (decision under prior law).

#### Findings.

When the conclusion of the trial court is inconsistent with its special findings, the cause on appeal will be remanded for entry of judgment according to special findings. *Powell v. Holman*, 50 Ark. 85, 6 S.W. 505 (1887) (decision under prior law).

The findings of fact of the trial judge in an election contest are conclusive on appeal. *Jones v. Glidewell*, 53 Ark. 161, 13 S.W. 723 (1890) (decision under prior law).

Where contestee on appeal assigned as error the admission of certain pollbooks in evidence, the trial would not be reversed in the absence of a showing in the record that the exclusion would have changed the result. *Merritt v. Hinton*, 55 Ark. 12, 17 S.W. 270 (1891) (decision under prior law).

In election contests, the finding of the trial judge upon conflicting evidence are as conclusive as the verdict of the jury. *Schuman v. Sanderson*, 73 Ark. 187, 83 S.W. 940 (1904) (decision under prior law); *Williams v. Buchanan*, 86 Ark. 259, 110 S.W. 1024 (1908) (decision under prior law).

#### Laws Superseded.

Local option election statute, which does not involve candidates or officials,



was not repealed by the comprehensive election code. *Garrett v. Andrews*, 294 Ark. 160, 741 S.W.2d 257 (1987), rehearing denied, 294 Ark. 160, 744 S.W.2d 386 (1988), cert. denied, *Andrews v. Adams*, 487 U.S. 1219, 108 S. Ct. 2873, 101 L. Ed. 2d 908 (1988).

**Cited:** *Henderson v. Anderson*, 251

Ark. 724, 475 S.W.2d 508 (1972); *Loyd v. Keathley*, 284 Ark. 391, 682 S.W.2d 739 (1985); *Womack v. Foster*, 338 Ark. 514, 998 S.W.2d 737 (1999); *Stilley v. Henson*, 342 Ark. 123, 26 S.W.3d 786 (2000); *Willis v. King*, 352 Ark. 55, 98 S.W.3d 427 (2003); *Hill v. Carter*, 357 Ark. 597, 184 S.W.3d 431 (2004).

### **7-5-805. Contest of state legislative offices.**

(a) Any contest to the eligibility, qualifications, or election to serve as a member of the Senate shall be in accordance with the rules and procedures for election contests as established by that chamber under its governing rules.

(b)(1)(A) Any action to contest eligibility, qualification, or election to serve as a member of the House of Representatives shall be initiated by filing a complaint with the Arkansas State Claims Commission.

(B) This procedure shall apply to House of Representatives election contests pursuant to Arkansas Constitution, Article 5, § 11, to contests of eligibility pursuant to Arkansas Constitution, Article 5, § 9, and to actions for expulsion pursuant to Arkansas Constitution, Article 5, § 12, except that a member of the House of Representatives shall be automatically suspended from the legislative process if a representative under felony criminal indictment is subsequently found guilty or pleads guilty.

(C)(i) If a representative under a felony criminal indictment in any federal or state court is subsequently found guilty or pleads guilty to the charges, then the Speaker of the House of Representatives shall immediately declare the representative suspended from the legislative process, and notification shall be given to the convicted representative, all members of the House of Representatives, the Chief Clerk of the House of Representatives, the Governor, the Secretary of State, and the Auditor of State.

(ii)(a) However, if a representative who was found guilty appeals that conviction, then the representative may petition the House Management Committee for a stay of the suspension from the legislative process, and the committee may grant a stay upon the filing of the petition and a notice of appeal to the relevant appellate court.

(b) The stay of the suspension shall continue until the appeal is complete or until the House of Representatives takes final action on the conviction.

(D) A representative suspended from the legislative process shall not participate in interim committee meetings nor in extraordinary or regular sessions of the General Assembly and shall not accept per diem and mileage but shall be eligible to retain the title of office and salary as a member of the General Assembly and is authorized to assist constituents and utilize legislative staff until a final action is taken by the House of Representatives.



(2) For House of Representatives election contests, the complaint shall be filed within fifteen (15) days after the election returns are certified by the county board of election commissioners. A responsive pleading shall be filed by the House of Representatives contestee within fifteen (15) days after receipt of the complaint unless an earlier or later date is set by the commission for good cause shown. Upon receipt of the complaint, the commission shall establish a schedule for discovery and hearing, which schedule shall allow the commission to take and review evidence presented by the parties and submit a nonbinding recommendation to the House of Representatives no later than five (5) days before the date fixed for the assembling of the General Assembly.

(3) For eligibility contests for the House of Representatives pursuant to Arkansas Constitution, Article 5, § 9, a complaint shall be filed at any time after the election of the individual to a seat in the House of Representatives. For action for expulsion from the House of Representatives pursuant to Arkansas Constitution, Article 5, § 12, the complaint shall be filed at any time permitted by law. A responsive pleading shall be filed within twenty (20) days after receipt of the complaint unless an earlier or later date is set by the commission for good cause shown. The commission shall establish a schedule for discovery and hearing, which schedule shall allow the commission to take and review evidence presented by the parties and submit a nonbinding recommendation to the House of Representatives in a timely fashion.

(4) An additional copy of all complaints filed pursuant to this subsection (b) shall be served on the Speaker of the House of Representatives. The Speaker of the House of Representatives shall appoint one (1) member of the chamber from each political party to serve as ex officio, nonvoting members of the commission for the consideration of all matters relating to the complaint.

(5) In those actions concerning a seat in the House of Representatives, the recommendation is to be made to the Speaker of the House of Representatives. The Speaker of the House of Representatives shall present the nonbinding recommendation to the members of the House of Representatives, and the members shall take such actions as they deem appropriate.

(6) The commission is authorized to promulgate any rules and regulations necessary to carry out the provisions set forth herein regarding contests for the seats in the House of Representatives.

**History.** Acts 1969, No. 465, Art. 10, § 8; A.S.A. 1947, § 3-1008; Acts 1991, No. 1014, § 1; 2001, No. 452, § 1.

#### CASE NOTES

##### **Applicability.**

This section applies to post-election contests, not to an action brought before a primary election to determine the eligibil-

ity of a candidate. *Valley v. Bogard*, 342 Ark. 336, 28 S.W.3d 269 (2000).

Trial court erred in dismissing a Democratic candidate's challenge to a Republi-

can candidate's residency requirements as the complaint was specifically authorized by § 7-5-207(b); this section applied only to post-election challenges under Ark.

Const., Art. 5, §§ 9, 11, and 12. *Tumey v. Daniels*, 359 Ark. 256, 196 S.W.3d 479 (2004).

### **7-5-806. Contest of state constitutional executive offices.**

(a) All contested general elections of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, and Attorney General, except as provided in this section, shall be decided by the joint vote of both houses of the General Assembly, and in that joint meeting the President of the Senate shall preside.

(b) If, following any general election, any person contests any election covered by this section, he or she shall present his or her petition to the General Assembly, setting forth the points on which he or she will contest the election and the facts which he or she will prove in support of the points, and he or she shall pray for leave to introduce his or her proofs.

(c) A vote shall be taken by yeas and nays in each house as to whether the prayers shall be granted.

(d) If a majority of the whole number of votes of both houses shall be in the affirmative, they shall appoint a joint committee to take testimony on the part of the petitioner and also on the part of the person whose place is contested. The committee shall have power to send for witnesses and to issue warrants under the hand of the chair to any judge or justice of the peace to take the deposition of witnesses at such time and place as the warrant shall direct. The points to which the testimony is to be taken shall be set forth in the warrants.

(e) Reasonable notice shall be given by the party in whose favor depositions shall be allowed to be taken to the opposite party of the time and place of taking the depositions. The judge or justice shall proceed in all things, in the attendance of witnesses and in taking and certifying the testimony, as is directed in the preceding section.

(f) The party shall also be allowed to attend the examination of witnesses before the committee and to cross-examine them, but no testimony shall be taken except in relation to the points set forth in the petition.

(g) The committee shall report the facts to the two (2) houses, and the day shall be fixed by a joint resolution for the meeting of the two (2) houses to decide the contest, on which decision the yeas and nays shall be taken and entered on the journal of each house.

**History.** Acts 1969, No. 465, Art. 10, § 9; A.S.A. 1947, § 3-1009; Acts 1993, No. 512, § 6.



## CASE NOTES

**Judgment for Salary.**

The circuit court was without jurisdiction to render a judgment for salary in advance of a determination of election

contest for Governor since judgment could not be rendered without passing upon title to the office. *Baxter v. Brooks*, 29 Ark. 173 (1874) (decision under prior law).

### **7-5-807. Election illegalities — Complaint — Grand jury investigation — Indictment — Trial.**

(a) If ten (10) reputable citizens of any county shall file a complaint with the circuit judge within twenty (20) days after any election alleging that illegal or fraudulent votes were cast, that fraudulent returns or certifications were made, or that the Political Practices Act was violated, the circuit judge, if in his or her opinion there is good ground to believe the charges to be true, shall convene a special term at once unless the regular term is in session or will convene within thirty (30) days.

(b) If the charges come in a regular term, the judge shall specially charge the grand jury as to them.

(c) Should a special term be called, it shall in all respects be as if convened by law. The circuit judge shall cause to be summoned grand and petit jurors, either on lists selected by the jury commissioners, by the sheriff, or by disinterested persons selected by him or her for that purpose, according to his or her opinion as to the best method to select unbiased jurors.

(d) Should indictments be returned, either at a special or regular term, for violating the general, primary, or special election laws, the defendants shall be given a speedy trial at the term, and the court may adjourn terms of other courts in order that they may be tried, unless for good cause shown or in the interests of justice a continuance or change of venue is granted. No change of venue shall be granted in such cases except after a hearing and a finding by the court that the defendant cannot obtain a fair and impartial trial in the district of the county where the indictment is pending.

**History.** Acts 1969, No. 465, Art. 10, § 5; A.S.A. 1947, § 3-1005.

tices Act, referred to in this section, is codified as §§ 7-1-103, 7-1-104, 7-3-108, and 7-6-101 — 7-6-104.

**Publisher's Notes.** The Political Prac-

## RESEARCH REFERENCES

**Ark. L. Rev.** Gingerich, The Arkansas Grand Jury, etc., 40 Ark. L. Rev. 55.

## CASE NOTES

**Police Report.**

Trial court properly dismissed citizens' complaint requesting that it convene a grand jury to investigate allegations of election fraud in a primary election to

nominate a candidate for county sheriff because nothing in the language of subsection (a) of this section prohibited the trial court from considering an Arkansas State Police report in reviewing the com-



plaint; the Arkansas State Police had conducted a preliminary investigation and determined that there was no need for a "full scale" criminal investigation. Hagen-

baugh v. Montgomery, 2009 Ark. 239, 308 S.W.3d 132 (2009).

**Cited:** Loyd v. Keathley, 284 Ark. 391, 682 S.W.2d 739 (1985).

### 7-5-808. Finding of guilt — Effect.

(a) Should it be proved to the satisfaction of the trial judge, in cases instituted under this subchapter, that a successful candidate has been guilty of violating the Political Practices Act or any of the laws regulating general, primary, or special elections, the circuit court shall enter the finding as a part of the judgment, irrespective of the determination of the issues in other suits filed under this subchapter or the verdict of the jury in a criminal prosecution.

(b) The judgment to that effect shall operate to deprive the candidate of the nomination, and the vacancy shall be filled in the manner provided by law.

**History.** Acts 1969, No. 465, Art. 10, § 6; A.S.A. 1947, § 3-1006.

**Publisher's Notes.** The Political Prac-

tices Act, referred to in this section, is codified as §§ 7-1-103, 7-1-104, 7-3-108, and 7-6-101 — 7-6-104.

### CASE NOTES

**Cited:** Loyd v. Keathley, 284 Ark. 391, 682 S.W.2d 739 (1985).

### 7-5-809. Determination of guilt after election — Effect.

(a) Should a proceeding under previous sections of this subchapter or a criminal prosecution under the criminal penalties imposed in this act not be determined finally until after the election, if the defendant in the proceeding is elected to the office or is the nominee of a political party to the office, and if it is determined that he or she was not entitled to be elected or to the nomination or that the judgment contains a finding that he or she violated the Political Practices Act or any of the laws applicable to general, primary, or special elections, then the judgment shall operate as a forfeiture of nomination or ouster from office.

(b) The vacancy shall be filled as provided by law for filling vacancies in nominations or office in case of death or resignation.

**History.** Acts 1969, No. 465, Art. 10, § 7; A.S.A. 1947, § 3-1007.

**Publisher's Notes.** The Political Practices Act, referred to in this section, is codified as §§ 7-1-103, 7-1-104, 7-3-108, and 7-6-101 — 7-6-104.

**Meaning of "this act".** Acts 1969, No. 465, codified as §§ 7-1-101, 7-1-103 — 7-1-105, 7-3-101 — 7-3-108, 7-4-101 — 7-4-105, 7-4-107 — 7-4-112, 7-5-101, 7-5-102, 7-5-103 [repealed], 7-5-202 — 7-5-209, 7-5-210 [repealed], 7-5-211, 7-5-301,

7-5-302 [repealed], 7-5-303 [repealed], 7-5-304 — 7-5-306, 7-5-307 [repealed], 7-5-308, 7-5-309, 7-5-312 [repealed], 7-5-313 [repealed], 7-5-314 — 7-5-319, 7-5-401 — 7-5-403, 7-5-405 — 7-5-417, 7-5-501 [repealed], 7-5-502 — 7-5-504, 7-5-505 [repealed], 7-5-506 [repealed], 7-5-507, 7-5-508 [repealed], 7-5-509, 7-5-511 [repealed], 7-5-512, 7-5-513, 7-5-515 — 7-5-518, 7-5-519 [repealed], 7-5-520 — 7-5-522, 7-5-524 — 7-5-531, 7-5-701 — 7-5-706, 7-5-801 — 7-5-809, 7-6-101 — 7-6-

105, 7-7-101 — 7-7-105, 7-7-201 — 7-7-203, 7-7-301 — 7-7-307, 7-7-309, 7-7-310 [repealed], 7-7-401, 7-7-402, 7-7-403 [repealed], 7-8-101 — 7-8-104, 7-8-301, 7-8-302, 7-8-304 — 7-8-307, 25-16-801.

RESEARCH REFERENCES

**Ark. L. Rev.** Comments: Removal and Discipline of Judges in Arkansas, Porter, 32 Ark. L. Rev. 545.

CASE NOTES

ANALYSIS

Purpose.  
Ouster.

**Purpose.**

The purpose of former law for determining guilt after an election and providing for ouster from office was to prevent one illegally nominated from holding the office, but not to entitle the contestant to the office. *Cain v. Carl--Lee*, 169 Ark. 887, 277 S.W. 551 (1925) (decision under prior law).

**Ouster.**

If either party to a primary contest is placed on the ticket and elected, and later

it is determined that he was not entitled to the nomination, the judgment should operate as an ouster, in which case there would be a vacancy to be filled according to law. *Robinson v. Knowlton*, 183 Ark. 1127, 40 S.W.2d 450 (1931); *Parish v. Nelson*, 186 Ark. 786, 55 S.W.2d 922 (1933) (decisions under prior law).

Where a trial court had ousted the apparent winner of an election for school board director due to ballots deemed defective under Ark. Const., Amend. 51, § 13, the trial court had the power to declare the next highest vote getter the winner of the election and to place him in office. *Loyd v. Keathley*, 284 Ark. 391, 682 S.W.2d 739 (1985).

7-5-810. Contest of election results — Time for appeal.

An appeal to contest the determination of any election in any court of this state must be filed within seven (7) calendar days of the final certification of the election result as announced by a court as authorized by this subchapter, except in instances in which the Arkansas Constitution establishes a time frame for filing an appeal.

**History.** Acts 1993, No. 514, § 1; 1997, No. 446, § 37.

CASE NOTES

ANALYSIS

In General.  
Jurisdiction.  
Standing.

**In General.**

The general time frame for appeals, i.e., 30 days, did not trump the seven-day time limit set out in the statute because the statutory rule was based on a fixed public policy which had been legislatively ad-

opted and had as its basis something other than court administration. *Weems v. Garth*, 338 Ark. 437, 993 S.W.2d 926 (1999).

**Jurisdiction.**

The requirement for an election contest to be filed within a certain number of days of the certification is mandatory and jurisdictional, the statutory requirements to secure jurisdiction must be strictly observed, and the jurisdictional facts must

appear on the face of the proceedings. *McCastlain v. Elmore*, 340 Ark. 365, 10 S.W.3d 835 (2000).

### **Standing.**

A disqualified candidate could not employ the expedited procedures applicable

under this section to a candidate's challenge to the results of an election. *Helton v. Jacobs*, 346 Ark. 344, 57 S.W.3d 180 (2001).

**Cited:** *Hill v. Carter*, 357 Ark. 597, 184 S.W.3d 431 (2004).

## **CHAPTER 6**

### **CAMPAIGN PRACTICES**

#### **SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. CAMPAIGN FINANCING.

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### **RESEARCH REFERENCES**

**Am. Jur.** 26 *Am. Jur. 2d*, Elections, § 287 et seq.

**Ark. L. Notes.** Cihak and Springman, HAVA and Arkansas Election Law Re-

form: Compliance and Promise, 2006 Arkansas L. Notes 1.

**C.J.S.** 29 *C.J.S.*, Elections, § 215 et seq.

#### **SUBCHAPTER 1 — GENERAL PROVISIONS**

##### **SECTION.**

- 7-6-101. Campaign services contract — Right of action.
- 7-6-102. Political practices pledge — Penalty for falsification
- 7-6-103. Campaign participation by judges — Penalty.

##### **SECTION.**

- 7-6-104. Defamatory political broadcasts.
- 7-6-105. Use of sound equipment — Penalty for interference.

**Effective Dates.** Acts 1969, No. 465, Art. 13, § 10: approved Apr. 17, 1969. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the present election laws are ancient and outdated in part and have caused and are causing much confusion and controversy, that there are particular problem areas in the present law which need immediate legislation in order to resolve same, that elections are and will continue to be held and conducted in this atmosphere of confusion and controversy until these problem areas are resolved and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in force and effect from and after its passage."

Acts 1970 (Ex. Sess.), No. 27, § 3: approved Mar. 13, 1970. Emergency clause provided: "It is hereby found and declared by the General Assembly of the State of Arkansas that the new election code contains no provision for the filing of political practice pledges for certain candidates; that it is necessary that all candidates file such pledge; that elections are and will continue to be held and conducted while this conflict exists and this act is necessary to protect peace, health, safety and welfare and, therefore, an emergency is declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1972 (Ex. Sess.), No. 37, § 6: Feb. 16, 1972. Emergency clause provided: "The General Assembly finds that the dates of the 1972 national nominating



conventions and primary elections are fast approaching, that the people of the state are in immediate need of a resolution of uncertainties that have arisen with respect to the selection of delegates and alternates thereto, and that the effective administration of the election laws of this state requires that the dates of the primary elections now fixed by law be advanced. Accordingly, an emergency is declared to exist, and this act, being necessary for the preservation of the public health, interest, safety, and welfare, shall be effective immediately upon its passage and approval."

Acts 1972 (Ex. Sess.), No. 42, § 5: Feb. 18, 1972. Emergency clause provided: "Whereas the great majority of municipalities elect their municipal officials as

independents and do not have political primaries for municipal office and whereas the great majority of municipal officials in small towns and cities receive no compensation or very nominal compensation and it would result in a real hardship to force candidates for municipal office in these small towns and cities to run in primaries and to file for municipal office seven (7) months before the general election and nine (9) months before the taking of office on January 1; and this act is immediately necessary to correct this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take effect immediately on its passage and approval."

### RESEARCH REFERENCES

**ALR.** Criticism or disparagement of character, competence, or conduct of candidate for office as defamation. 37 A.L.R.4th 1088.

### CASE NOTES

**Cited:** *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

## 7-6-101. Campaign services contract — Right of action.

No action shall be brought to charge any person upon any contract, promise, or agreement for any service rendered to or for him or her as a candidate in any election in this state or in aid of his or her campaign for the nomination to any office in this state unless the agreement, promise, or contract, upon which said action shall be brought, or some memorandum or note thereof, shall be made in writing and signed by the party to be charged therewith, or signed by some other person by him or her thereunto properly authorized in writing.

**History.** Acts 1969, No. 465, Art. 11, § 1; A.S.A. 1947, § 3-1101.

### CASE NOTES

**Cited:** *Stillinger v. Rector*, 253 Ark. 982, 490 S.W.2d 109 (1973).

**7-6-102. Political practices pledge — Penalty for falsification**

(a)(1) Candidates for political party nominations for state or district offices shall file with the Secretary of State and candidates for county, municipal, or township offices shall file with the county clerk of the county during the filing period set out in § 7-7-203 for the preferential primary election a pledge in writing stating that they are familiar with the requirements of §§ 7-1-103, 7-1-104, 7-3-108, 7-6-101, 7-6-103, 7-6-104, and this section and will comply in good faith with their terms.

(2) Persons seeking nomination as independent candidates and school district candidates shall file the political practices pledge at the time of filing the petition for nomination.

(3) Independent candidates for municipal office shall file the political practices pledge with the county clerk at the time of filing the petition for nomination.

(4) Persons who wish to be write-in candidates shall file the political practices pledge at the time of filing the notice to be a write-in candidate.

(5) Nonpartisan judicial candidates paying filing fees in accordance with § 7-10-103(b) shall file the political practices pledge at the time of filing for office.

(6) Nonpartisan judicial candidates filing by petition in accordance with § 7-10-103(c) shall file the political practices pledge at the time of filing the petition.

(b) All political practices pledge forms for state or district offices and county, municipal, or township offices shall be required to contain the following additional pledge:

"I hereby certify that I have never been convicted of a felony in Arkansas or in any other jurisdiction outside of Arkansas."

(c) Any person who has been convicted of a felony and signs the pledge stating that he or she has not been convicted of a felony shall be guilty of a Class D felony.

(d) For purposes of this section, a person shall be qualified to be a candidate for a state, district, county, municipal, and township office and may certify that he or she has never been convicted of a felony if his or her record was expunged in accordance with §§ 16-93-301 — 16-93-303, or a similar expunction statute in another state, provided, the candidate presents a certificate of expunction from the court that convicted the prospective candidate.

(e)(1) The name of a candidate who fails to sign and file the pledge shall not appear on the ballot.

(2)(A) However, within five (5) days from which the pledge is required to be filed, the Secretary of State or the county clerk shall notify by certified mail that requires a return receipt signed by the candidate those candidates who have failed to file a signed political practice pledge. The notice shall include a copy of the written pledge required by this section.

(B) Failure of the state or district candidate to file with the Secretary of State or of the county, municipal, or township candidate

to file with the county clerk within twenty (20) days of receipt or refusal of this notice shall prevent the candidate's name from appearing on the ballot.

**History.** Acts 1969, No. 465, Art. 11, § 3; 1970 (Ex. Sess.), No. 27, § 1; 1972 (Ex. Sess.), No. 37, § 3; 1972 (Ex. Sess.), No. 42, § 3; 1983, No. 244, § 1; A.S.A. 1947, §§ 3-1103, 3-1103.1; Acts 1987, No. 248, § 10; 1989, No. 755, § 1; 1989, No. 912, § 3; 1995, No. 665, § 2; 1997, No. 886, § 1; 2003, No. 542, § 1; 2003, No. 1731, § 2; 2005, No. 67, § 15; 2007, No. 222, § 1; 2007, No. 1049, § 20.

**Amendments.** The 2007 amendment by No. 222 inserted "and candidates for a school district board of directors" in (a)(2); inserted "more than one hundred and ten (110) nor" in (a)(3); and inserted "school district" in (a)(4).

The 2007 amendment by No. 1049 in (a), inserted "political party nominations for" and substituted "during the filing period set out in § 7-7-203 for the" for "not later than 12:00 noon fourteen (14) days after the third Tuesday in March, before the" in (1), inserted "and school district candidates" in (2), substituted "at the time of filing the petition for nomination" for "not fewer than ninety (90) calendar days before the general election by 12:00 noon" in (3), and deleted the former last sentence in (4); deleted "within five (5) days following the first Tuesday in April before the preferential primary election or" preceding "within five (5) days" in (e)(2)(A); and made related and stylistic changes.

## CASE NOTES

### ANALYSIS

Certificate of Expunction.

Costs.

Exceptions.

Filing.

Independent Candidates.

Substantial Compliance.

Time of Filing.

### Certificate of Expunction.

Because the reference in subsection (d) is to a "certificate of expunction" from Arkansas or another state, a federal certificate may be regarded as the equivalent of such a document. *Tyler v. Shackleford*, 303 Ark. 662, 799 S.W.2d 789 (1990).

The setting aside of the conviction of a youthful offender under former 18 U.S.C. § 5201(b) meant that it were as if the conviction had never been, and a judge who had had a conviction set aside was never obligated under this section to produce his federal Certificate of Vacation of Conviction with his political practices pledges because, legally, his conviction never occurred and the documentation was "a ministerial act" that simply certified what had already been accomplished. *Tyler v. Shackleford*, 303 Ark. 662, 799 S.W.2d 789 (1990).

### Costs.

Former law providing for pledge of compliance by candidate did not contemplate that the county pay the costs of filing pledges, but the costs must be borne by those seeking office. State for use and benefit of Independence County v. Baker, 197 Ark. 1075, 126 S.W.2d 937 (1939) (decision under prior law).

### Exceptions.

Candidates for board of directors or municipal judge in cities operating under the city manager form of government are not required to file a political practice pledge as provided in this section. *Williams v. Pulaski County Election Comm'n*, 249 Ark. 309, 459 S.W.2d 52 (1970).

### Filing.

Nowhere in this section is there a requirement that candidates file their political practice pledges in person. *Ridgeway v. Ray*, 297 Ark. 195, 760 S.W.2d 848 (1988).

### Independent Candidates.

The concept of "independent candidates" does not include candidates for board of directors or municipal judge in a city having a city manager form of government, since all such candidates run without political affiliation. *Williams v. Pu-*



laski County Election Comm'n, 249 Ark. 309, 459 S.W.2d 52 (1970).

### **Substantial Compliance.**

A candidate's pledge that he was familiar with former corrupt practices laws, without more, was substantial compliance with former similar statute especially where it was not contended that the corrupt practices laws had been violated. *Taaffe v. Sanderson*, 173 Ark. 970, 294 S.W. 74 (1927) (decision under prior law).

Where a candidate for state senator, in good faith, intended to comply with prior law, and by mistake filed his pledge with the secretary of the Democratic Central Committee instead of with the Secretary of State, he should not be denied the right to have his name placed on the ticket. *Spence v. Whittaker*, 178 Ark. 51, 9 S.W.2d 769 (1928) (decision under prior law).

### **Time of Filing.**

Although the filing of the pledge was only two days late and might have been considered a substantial compliance with

former similar statute if no objection had been raised until after the election, where enforcement of the provisions of the law was sought before the election, the provision in the law as to the time for filing was considered mandatory. *Wright v. Sullivan*, 229 Ark. 378, 314 S.W.2d 700 (1958) (decision under prior law).

This section is mandatory and not directory where enforcement is sought before the election, and it was error for the trial court to direct the commissioners to place on the general election ballots the names of candidates who filed their political practices pledges after the filing deadline. *Stillinger v. Rector*, 253 Ark. 982, 490 S.W.2d 109 (1973).

Failure to timely file a political practice pledge with the Secretary of State as required by subdivision (e)(2)(B) of this section is reason enough to prevent a candidate's name from appearing on the ballot. *Lewis v. West*, 318 Ark. 334, 885 S.W.2d 663 (1994).

## **7-6-103. Campaign participation by judges — Penalty.**

(a) It shall be unlawful for any judge of the district or circuit courts and any Justice of the Supreme Court or Judge of the Court of Appeals to participate in the campaign of any candidate for office at any election, other than his or her own.

(b) The word "participation", as used in this section, shall mean the managing of another's campaign or any solicitation on his or her behalf.

(c) Participation shall be deemed to be misfeasance and malfeasance in office and shall subject the judge to impeachment therefor.

**History.** Acts 1969, No. 465, Art. 11, § 6; A.S.A. 1947, § 3-1106; Acts 2005, No. 1994, § 261.

## **RESEARCH REFERENCES**

**Ark. L. Rev. Comments:** Removal and Discipline of Judges in Arkansas, Porter, 32 Ark. L. Rev. 545.

## **7-6-104. Defamatory political broadcasts.**

Neither the owner, licensee, nor operator of a visual or sound radio broadcasting station or network of stations nor his or her agents or employees shall be liable for any damages for any defamatory statement published or uttered in, or as a part of, a visual or sound broadcast by a candidate for political office in those instances in which, under the acts of Congress or the rules and regulations of the Federal Communi-

cations Commission, the broadcasting station or network is prohibited from censoring the script of the broadcast.

**History.** Acts 1969, No. 465, Art. 11, § 8; A.S.A. 1947, § 3-1108.

### **7-6-105. Use of sound equipment — Penalty for interference.**

(a) When any citizen of Arkansas becomes a candidate in any primary or general election and complies with all the laws pertaining thereto, then the candidate shall be entitled to go into any city, town, municipality, or rural community in Arkansas and operate his or her acoustical or sound equipment between the hours of 8:00 a.m. and 9:00 p.m. notwithstanding any town or city ordinance to the contrary.

(b) Any person who interferes in any manner with the right granted in this section shall be guilty of a Class B misdemeanor.

**History.** Acts 1969, No. 465, Art. 13, §§ 1, 2; A.S.A. 1947, §§ 3-1301, 3-1302; Acts 2005, No. 1994, § 394.

## **SUBCHAPTER 2 — CAMPAIGN FINANCING**

### **SECTION.**

- 7-6-201. Definitions.
- 7-6-202. Penalties.
- 7-6-203. Contributions — Limitations —  
Acceptance or solicitation  
— Use as personal income  
— Disposition.
- 7-6-204. Restriction on cash contribu-  
tions or expenditures —  
Exception.
- 7-6-205. Contributions made indirectly,  
anonymously, or under as-  
sumed names.
- 7-6-206. Records of contributions and ex-  
penditures.
- 7-6-207. Reports of contributions — Can-  
didates for office other  
than school district, town-  
ship, municipal, or county  
office, etc.
- 7-6-208. Reports of contributions — Can-  
didates for school district,  
township, or municipal of-  
fice.
- 7-6-209. Reports of contributions — Can-  
didates for county office.
- 7-6-210. Reports of contributions — Per-  
sonal loans.

### **SECTION.**

- 7-6-211, 7-6-212. [Repealed.]
- 7-6-213. Verification of reports.
- 7-6-214. Publication of reports.
- 7-6-215. Registration and reporting by  
approved political action  
committees.
- 7-6-216. Registration and reports by ex-  
ploratory committees.
- 7-6-217. Creation of Arkansas Ethics  
Commission.
- 7-6-218. Citizen complaints.
- 7-6-219. Retiring a campaign debt.
- 7-6-220. Reporting of independent expen-  
ditures.
- 7-6-221. [Repealed.]
- 7-6-222. Tax credits for certain individual  
political contributions.
- 7-6-223. Reports of contributions by po-  
litical parties.
- 7-6-224. Authority of local jurisdictions.
- 7-6-225. Filing deadlines.
- 7-6-226. Registration and reporting by  
county political party com-  
mittees.
- 7-6-227. Registration by independent ex-  
penditure committee.

**Cross References.** Political parties, § 7-3-101 et seq.

**Effective Dates.** Acts 1975, No. 788, § 13: Apr. 4, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state regulating contributions to political campaigns are totally inadequate to prevent abuses in the conduct of political campaigns, and that the immediate passage of this act is necessary in order to establish limitations on the amount of campaign contributions that may be made by one person or a group, and to require that records be kept by candidates for public office of contributions received by them in excess of \$100; and that the immediate passage of this act is necessary to preserve the integrity of the election laws of this state. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Init. Meas. 1990, No. 1, § 9: Dec. 7, 1990, except that §§ 1, 2, 3(e) and (j), 4, and § 7-6-215 of § 6 shall become effective on Nov. 7, 1990.

Identical Acts 1995, Nos. 349 and 352, § 7: Feb. 17, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that there now exists a vacancy on the Ethics Commission due to a decision by the Arkansas Supreme Court that invalidated the Chief Justice's appointment of a member of the commission; that this vacancy should be filled as soon as possible; and that this act establishes the mechanism for filling that vacancy and therefore should be placed into effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Init. Meas. 1996, No. 1, § 13: Jan. 1, 1997 except that §§ 2 and 3 shall become effective on Nov. 6, 1996.

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 estab-

lished the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1446, § 2: effective for tax years beginning on and after Jan. 1, 1999.

Acts 2001, No. 1839, § 35: Became law without Governor's signature Apr. 20, 2001. Emergency clause provided: "It is found and determined by the General Assembly that various provisions of the Arkansas Code relating to campaign financing and ethics are vague or otherwise in need of modification; that this act accomplishes those purposes; and that this act should go into effect as soon as possible so that those persons who are subject to the provisions of the various ethics and campaign finance statutes receive the benefit of the clarifications as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 774, § 6: effective for tax years beginning on or after Jan. 1, 2003.

Acts 2003, No. 1185, § 6: Jan. 1, 2005, by its own terms.



## CASE NOTES

## ANALYSIS

In General.  
Parties.

**In General.**

Initial Measure 1990, No. 1 regulates political action committees, solicitations by and contributions to political candidates, the use of campaign funds, and compensation of members of the General Assembly for making speeches and other appearances. *Spradlin v. Arkansas Ethics Comm'n*, 314 Ark. 108, 858 S.W.2d 684 (1993).

**Parties.**

State Attorney was proper defendant in an action challenging the constitutionality of certain provisions of this subchapter. *Arkansas Right to Life State Political Action Comm. v. Butler*, 972 F. Supp. 1187 (W.D. Ark. 1997).

Plaintiffs were not required to subject themselves to either the fine or term of

imprisonment found in § 7-6-202 nor the penalties outlined in § 7-6-218 in order to have standing to challenge the constitutionality of the 1996 restrictions in federal court. *Arkansas Right to Life State Political Action Comm. v. Butler*, 972 F. Supp. 1187 (W.D. Ark. 1997).

Plaintiffs had standing to pursue a pre-enforcement challenge of Init. Meas. 1996, No. 1, because the Act had been recently enacted, it facially restricted the plaintiffs, and violation of the statute could subject the plaintiffs to criminal prosecution. *Arkansas Right to Life State Political Action Comm. v. Butler*, 972 F. Supp. 1187 (W.D. Ark. 1997).

Plaintiffs did not have standing to challenge this subchapter on behalf of candidates whose First Amendment rights may or may not be infringed. *Arkansas Right to Life Political Action Comm. v. Butler*, 983 F. Supp. 1209 (W.D. Ark. 1997), *aff'd*, 146 F.3d 558 (8th Cir. 1998).

## RESEARCH REFERENCES

**ALR.** Orders and enactments requiring disclosure by public officers and employ-

ees or candidates for office. 22 A.L.R.4th 237.

**7-6-201. Definitions.**

As used in this subchapter:

(1)(A) "Approved political action committee" means any person that:

(i) Receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees;

(ii) Does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and

(iii) Registers pursuant to § 7-6-215 prior to making contributions.

(B) "Approved political action committee" shall not include an organized political party as defined in § 7-1-101, a county political party committee, the candidate's own campaign committee, an exploratory committee, or a ballot or legislative question committee as defined in § 7-9-402;

(2) "Candidate" means any individual who has knowingly and willingly taken affirmative action, including solicitation of funds, for the purpose of seeking nomination for or election to any public office;

(3) "Carryover funds" means the amount of campaign funds retained from the last election by the candidate for future use but not to exceed the annual salary, excluding expense allowances, set by Arkansas law for the office sought;

(4)(A) "Contribution" means, whether direct or indirect, advances, deposits, or transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payment for services, dues, advancements, forbearance, loans, or pledges or promises of money or anything of value, whether or not legally enforceable, to a candidate, committee, or holder of elective office made for the purpose of influencing the nomination or election of any candidate.

(B)(i) "Contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; and any payments for the services of any person serving as an agent of a candidate or committee by a person other than the candidate or committee or persons whose expenditures the candidates or committee must report under this subchapter.

(ii) "Contribution" further includes any transfer of anything of value received by a committee from another committee.

(C) "Contribution" shall not include noncompensated, nonreimbursed, volunteer personal services or travel;

(5) "Contribution and expenditure" shall not include activity sponsored and funded by a political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205 to promote its candidates or nominees through events such as dinners, luncheons, rallies, or similar gatherings and shall not include nonpartisan activity designed to encourage individuals to register to vote or to vote or any communication by any membership organization to its members or stockholders if the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any candidate;

(6) "County political party committee" means a person that:

(A) Is organized at the county level for the purpose of supporting its affiliate party and making contributions;

(B) Is recognized by an organized political party, as defined in § 7-1-101, as being affiliated with that political party;

(C) Receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, political action committees, or other county political party committees;

(D) Does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and

(E) Registers pursuant to § 7-6-226 prior to making contributions;

(7) "Election" means each election held to nominate or elect a candidate to any public office, including school elections. For the purposes of this subchapter, a preferential primary, a general primary, a special election, and a general election shall each constitute a separate election;

(8) "Expenditure" means a purchase, payment, distribution, gift, loan, or advance of money or anything of value, and a contract, promise, or agreement to make an expenditure, made for the purpose of influencing the nomination or election of any candidate;

(9)(A) "Exploratory committee" means a person that receives contributions which are held to be transferred to the campaign of a single candidate in an election.

(B) "Exploratory committee" shall not include:

(i) A political party;

(a) That meets the definition of a political party under § 7-1-101; or

(b) A political party that meets the requirements of § 7-7-205; or

(ii) The candidate's own campaign committee;

(10) "Financial institution" means any commercial bank, savings and loan, mutual savings bank or savings bank, insurance company brokerage house, or any corporation that is in the business of lending money and that is subject to state or federal regulation;

(11) An "independent expenditure" is any expenditure which is not a contribution and:

(A) Expressly advocates the election or defeat of a clearly identified candidate for office;

(B) Is made without arrangement, cooperation, or consultation between any candidate or any authorized committee or agent of the candidate and the person making the expenditure or any authorized agent of that person; and

(C) Is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of the candidate;

(12) "Independent expenditure committee" means any person that receives contributions from one (1) or more persons in order to make an independent expenditure and is registered pursuant to § 7-6-227 prior to making expenditures;

(13)(A) "Legislative caucus committee" means a person that is composed exclusively of members of the General Assembly, that elects or appoints officers and recognizes identified legislators as members of the organization, and that exists for research and other support of policy development and interests that the membership hold in common.

(B) "Legislative caucus committee" includes, but is not limited to, a political party caucus of the General Assembly, the Senate, or the House of Representatives.



(C) An organization whose only nonlegislator members are the Lieutenant Governor or the Governor is a "legislative caucus committee" for the purposes of this subchapter;

(14)(A) "Person" means any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert.

(B) "Person" shall also include:

(i) A political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205;

(ii) A county political party committee; and

(iii) A legislative caucus committee;

(15)(A) "Prohibited political action committee" means any person that receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees but that does not meet the requirements of an approved political action committee.

(B) "Prohibited political action committee" shall not include:

(i) A political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205;

(ii) The candidate's own campaign committee;

(iii) A county political party committee;

(iv) An exploratory committee; or

(v) A ballot or legislative question committee;

(16) "Public office" means any office created by or under authority of the laws of the State of Arkansas or of a subdivision thereof that is filled by the voters, except a federal office;

(17) "Surplus campaign funds" means any balance of campaign funds over expenses incurred as of the day of the election except for:

(A) Carryover funds; and

(B) Any funds required to repay loans made by the candidate from his or her personal funds to the campaign or to repay loans made by financial institutions to the candidate and applied to the campaign; and

(18)(A) "Written instrument" means a check on which the contributor is directly liable or which is written on a personal account, trust account, partnership account, business account, or other account that contains the contributor's funds.

(B) As used in § 7-6-204 in the case of a contribution by credit card or debit card, "written instrument" includes without limitation:

(i) A paper record signed by the cardholder, provided that the paper record contains the following information for the cardholder at the time of making the contribution:

(a) Valid name;

(b) Complete address;

(c) Place of business;

(d) Employer; and

(e) Occupation; or

(ii) In the case of a contribution made through the Internet, an electronic record created and transmitted by the cardholder, provided that the electronic record contains the following information for the cardholder at the time of making the contribution:

(a) Valid name;

(b) Complete address;

(c) Place of business;

(d) Employer; and

(e) Occupation.

**History.** Acts 1975, No. 788, § 1; 1977, No. 312, §§ 4, 7; A.S.A. 1947, § 3-1109; Acts 1987, No. 246, § 1; Init. Meas. 1990, No. 1, § 1; Acts 1993, No. 1209, § 2; Init. Meas. 1996, No. 1, § 1; Acts 1997, No. 491, § 1; 1999, No. 553, § 2; 2003, No. 195, § 1; 2005, No. 1284, § 2; 2005, No. 2006, § 1; 2009, No. 473, § 2; 2009, No. 1204, § 1; 2011, No. 721, § 2.

**Amendments.** The 2009 amendment by No. 473 substituted “§ 7-6-227” for “§ 7-6-215” in (12).

The 2009 amendment by No. 1204 substituted “repay loans made by the candidate from his or her personal funds” for “reimburse the candidate for personal funds contributed” in (17).

The 2011 amendment substituted “a political party that meets the definition of a

political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205” for “organized political parties as defined in § 7-1-101” in (5); subdivided and rewrote (9)(B); subdivided (14) as (14)(A) and (B); and in (14)(B), substituted “It” for “Person” at the beginning and deleted “organized political parties as defined in § 7-1-101” at the end; inserted (14)(B)(i); inserted “ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees” in (15)(A); subdivided part of (15)(B); deleted “an organized political party as defined in § 7-1-101” at the end of the introductory paragraph of (15)(B); inserted (15)(B)(i); and added (18).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Election Law, Campaign Finance and Disclosure Laws, 26 U. Ark. Little Rock L. Rev. 395.

Survey of Legislation, 2005 Arkansas General Assembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.

## CASE NOTES

### Constitutionality.

A heavier burden on the rights, under U.S. Const., Amend. 1, of approved political action committees (PACs), than on the rights of small donor PACs, is justified by the state’s compelling interest in avoiding actual or apparent corruption. *Russell v. Burris*, 978 F. Supp. 1211 (E.D. Ark. 1997), *aff’d in part, reversed in part*, 146 F.3d 563 (8th Cir. 1998).

Limit of \$200 on contributions to approved political action committees has not

prevented political committees from amassing the necessary resources for effective advocacy, and does not appreciably infringe on their rights to free speech and association. *Russell v. Burris*, 978 F. Supp. 1211 (E.D. Ark. 1997), *aff’d in part, reversed in part*, 146 F.3d 563 (8th Cir. 1998).

Substantial disparity between small donor political action committees’ (PACs) and approved PACs’ abilities to raise money and contribute to candidates is

balanced by the facts small donor PACs may only receive contributions from individuals, and approved PACs are not limited in the amount they can contribute overall; this disparity does not violate the approved PACs equal protection rights. *Russell v. Burris*, 978 F. Supp. 1211 (E.D. Ark. 1997), *aff'd in part, reversed in part*, 146 F.3d 563 (8th Cir. 1998).

Whether the \$200 limit in subdivision (1) is narrowly tailored to serve the state's interest in preventing corruption held a question of fact; summary judgment on the issue of constitutionality was therefore denied. *Arkansas Right to Life Political Action Comm. v. Butler*, 983 F. Supp. 1209 (W.D. Ark. 1997), *aff'd*, 146 F.3d 558 (8th Cir. 1998).

## 7-6-202. Penalties.

Any person who knowingly or willfully fails to comply with any provisions of this subchapter shall upon conviction be guilty of a Class A misdemeanor.

**History.** Acts 1975, No. 788, § 10; A.S.A. 1947, § 3-1118; Acts 2005, No. 1994, § 224.

## CASE NOTES

### Standing to Challenge.

Plaintiffs were not required to subject themselves to either the fine or term of imprisonment found in this section or the penalties outlined in § 7-6-218 in order to challenge the constitutionality of the new restrictions; it is not required that a party

expose herself to arrest or prosecution under a criminal statute in order to challenge the statute in federal court. *Arkansas Right to Life State Political Action Comm. v. Butler*, 972 F. Supp. 1187 (W.D. Ark. 1997).

## 7-6-203. Contributions — Limitations — Acceptance or solicitation — Use as personal income — Disposition.

(a)(1)(A) It shall be unlawful for any candidate for any public office, except the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or for any person acting on the candidate's behalf to accept campaign contributions in excess of two thousand dollars (\$2,000) per election from any person.

(B) A candidate may accept a campaign contribution or contributions up to the maximum amount from any prospective contributor for each election, whether opposed or unopposed.

(2)(A) It shall be unlawful for any candidate for the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or for any person acting on the candidate's behalf to accept campaign contributions in excess of two thousand dollars (\$2,000) per election from any person.

(B) A candidate may accept a campaign contribution or contributions up to the maximum amount from any prospective contributor for each election, whether opposed or unopposed.

(b)(1)(A) It shall be unlawful for any person to make a contribution to a candidate for any public office, except the office of Governor,



Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or to any person acting on the candidate's behalf, which in the aggregate exceeds two thousand dollars (\$2,000) per election.

(B) A person may make a contribution or contributions up to the maximum amount to a candidate for each election, whether opposed or unopposed.

(2)(A) It shall be unlawful for any person to make a contribution to a candidate for the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or to any person acting on the candidate's behalf, which in the aggregate exceeds two thousand dollars (\$2,000) per election.

(B) A person may make a contribution or contributions up to the maximum amount to a candidate for each election, whether opposed or unopposed.

(c) The limitation shall not apply to loans made by a candidate from his or her own personal funds to the campaign, contributions made by a candidate from his or her personal funds to the campaign, or to personal loans made by financial institutions to the candidate and applied to his or her campaign.

(d) However, an organized political party as defined in § 7-1-101 may contribute up to two thousand five hundred dollars (\$2,500) to each of the party's candidates per election.

(e)(1) It shall be unlawful for any candidate for any public office or any person acting in the candidate's behalf to accept any contribution from a prohibited political action committee for any election.

(2) It shall be unlawful for any prohibited political action committee to make a contribution to a candidate for public office in an election.

(3) It shall be unlawful for any ballot question committee, legislative question committee, political party, county political party committee, or approved political action committee to accept any contribution from a prohibited political action committee.

(4) It shall be unlawful for any prohibited political action committee to make a contribution to:

- (A) A ballot question committee;
- (B) A legislative question committee;
- (C) A political party;
- (D) A county political party committee; or
- (E) An approved political action committee.

(f) It shall be unlawful for any candidate for public office, any person acting in the candidate's behalf, or any exploratory committee to solicit or accept campaign contributions more than two (2) years before an election at which the candidate seeks nomination or election. This subsection shall not prohibit the solicitation or acceptance of a contribution for the sole purpose of raising funds to retire a previous campaign debt.

(g)(1) A candidate shall not take any campaign funds as personal income. This subdivision (g)(1) shall not apply to campaign funds that were:

(A) Accumulated prior to the passage of Initiated Act 1 of 1990; or

(B) Disposed of prior to July 28, 1995.

(2) A candidate shall not take any campaign funds as income for his or her spouse or dependent children, except that:

(A) This subsection shall not prohibit a candidate who has an opponent from employing his or her spouse or dependent children as campaign workers; and

(B) Any candidate who has an opponent and who, during the campaign and before the election, takes a leave of absence without pay from his or her primary place of employment shall be authorized to take campaign funds during the campaign and before the election as personal income up to the amount of employment income lost as a result of such leave of absence.

(3) A candidate who takes campaign funds during the campaign and before the election under a leave of absence pursuant to the provisions of subdivision (g)(2) of this section may elect to treat the campaign funds as a loan from the campaign fund to the candidate to be paid back to the campaign fund by the candidate.

(4)(A) For purposes of this subsection, a candidate who uses campaign funds to fulfill any commitment, obligation, or expense that would exist regardless of the candidate's campaign shall be deemed to have taken campaign funds as personal income.

(B) The use of campaign funds to purchase a cake or other perishable item of food at a fund-raising event held by a volunteer agency, as defined in § 16-6-103, shall not be considered a taking of campaign funds as personal income.

(C) The use of campaign funds to purchase advertising prior to the date the final report is due to be filed thanking voters for their support shall not be considered a taking of campaign funds as personal income.

(h)(1) Within thirty (30) days following the end of the month in which an election is held or a candidate has withdrawn, a candidate shall turn over surplus campaign funds to either:

(A) The Treasurer of State for the benefit of the General Revenue Fund Account of the State Apportionment Fund;

(B) A political party as defined in § 7-1-101 or a political party caucus of the General Assembly, the Senate, or the House of Representatives;

(C) A nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(D) Cities of the first class, cities of the second class, or incorporated towns; or

(E) The contributors to the candidate's campaign.

(2) If the candidate's campaign has not ended, disposal of surplus campaign funds shall not be required and the candidate may carry

forward any remaining funds to the general primary election, general election, or general runoff election for that same office.

(3)(A) If an unopposed candidate agrees not to solicit further campaign contributions by filing an affidavit declaring such an agreement, the candidate may dispose of any surplus campaign funds prior to a general election as soon as the time has passed to declare an intent to be a write-in candidate pursuant to § 7-5-205.

(B) For unopposed candidates for nonpartisan judicial office, the affidavit may be filed after the deadlines have passed to declare as a filing fee candidate, petition candidate, or write-in candidate under § 7-10-103.

(C) The affidavit shall be filed in the office in which the candidate is required to file reports of contributions received and expenditures made.

(D) Unopposed candidates and defeated candidates who file the affidavit are exempt from further reporting requirements provided that the affidavit contains:

(i) All campaign activity not previously reported; and

(ii) A statement that the candidate's campaign fund has a zero (\$0.00) balance.

(4)(A) Carryover funds may be expended at any time for any purpose not prohibited by this chapter and may be used as campaign funds for seeking any public office. Nothing shall prohibit a person at any time from disposing of all or any portion of his or her carryover funds in the same manner as for surplus campaign funds. However, the candidate shall not take the funds as personal income or as income for his or her spouse or dependent children.

(B)(i) When a person having carryover funds files as a candidate for public office, his or her carryover funds shall be transferred to the person's active campaign fund. Once transferred, the funds will no longer be treated as carryover funds.

(ii) This subdivision (h)(4)(B) shall not apply to carryover funds from an election held prior to July 1, 1997.

(iii) This subdivision (h)(4)(B) shall not apply to a campaign debt.

(C)(i) If carryover funds are expended prior to transferring the funds to an active campaign fund, the expenditures shall be reported pursuant to this subdivision (h)(4)(C). A person shall file an expenditure report concerning carryover funds if since the last report concerning the carryover funds, the person has expended in excess of five hundred dollars (\$500). The report shall be filed at the office in which the candidate was required to file his or her campaign contribution and expenditure reports for the previous campaign not later than fifteen (15) days after a calendar quarter in which a report becomes required. No report is required in any calendar quarter in which the cumulative expenditure limit has not been exceeded since the person's last report.

(ii) The person shall also file an expenditure report for the calendar quarter in which he or she transfers the carryover funds to an active campaign fund.



(iii) A person who retains carryover funds shall file an annual report outlining the status of the carryover fund account as of December 31 unless the person has filed a quarterly report during the calendar year pursuant to subdivisions (h)(4)(C)(i) and (ii) of this section. The annual report shall be due by January 31 of each year.

(iv) The carryover fund reports of a candidate for school district, township, municipal, or county office shall be filed with the county clerk of the county in which the election was held.

(v) The carryover fund reports of a candidate for state or district office shall be filed with the Secretary of State.

(D)(i) Carryover funds may be retained by a person for not more than ten (10) years after the last election at which he or she was a candidate, or if applicable, not more than ten (10) years after the last day that the person held office, and any remaining carryover funds shall be disposed of in the same manner as for surplus campaign funds.

(ii)(a) The officer with whom the person last filed a final campaign report shall provide the person timely notice of the requirements of this subdivision (h)(4)(D) prior to the expiration of the ten-year period.

(b) However, failure to provide the notice does not relieve the person of his or her obligation under this subsection.

(5) After the date of an election at which the person is a candidate for nomination or election, the person shall not accept campaign contributions for that election except for the sole purpose of raising funds to retire campaign debt.

(6) Surplus campaign funds or carryover funds given to a political party caucus shall be segregated in an account separated from other caucus funds and shall not be used:

(A) By the political party caucus to make a campaign contribution;  
or

(B) To provide any personal income to any candidate who donated surplus campaign funds or carryover funds.

(i) A candidate may maintain his or her campaign funds in one (1) or more campaign accounts. Campaign funds shall not be placed in an account containing personal or business funds.

**History.** Acts 1975, No. 788, § 2; 1977, No. 312, § 6; 1981, No. 690, § 1; A.S.A. 1947, § 3-1110; Init. Meas. 1990, No. 1, §§ 2, 3; Acts 1993, No. 1195, § 1; 1993, No. 1196, § 1; 1995, No. 863, §§ 1-3; 1995, No. 1296, § 41; Init. Meas. 1996, No. 1, §§ 2, 3; Acts 1997, No. 116, § 1; 1997, No. 491, §§ 2, 3; 1999, No. 553, § 3; 1999, No. 1057, § 1; 2001, No. 954, § 1; 2001, No. 1839, § 2; 2003, No. 195, §§ 2, 3; 2003, No. 248, § 1; 2005, No. 1284, §§ 3, 4; 2005, No. 1413, § 1; 2005, No. 1695, § 1; 2007, No. 221, § 2; 2009, No. 340, § 1;

2009, No. 473, §§ 3, 4; 2009, No. 1204, § 2; 2011, No. 721, §§ 3, 4.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, subsection (g) of this section is set out above as amended by Acts 1993, No. 1195. Acts 1993, No. 818, § 1, effective January 1, 1994, also amended subsection (g) to read as follows: "It shall be unlawful for the Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, Commissioner of State Lands, members of the General Assembly, a candidate for any

such office, or an exploratory committee for the candidacy of any person to any such office to accept a contribution during the period beginning thirty (30) days before and ending thirty (30) days after any regular session of the General Assembly or during any special session of the General Assembly. During such periods of time, it shall be unlawful for any person to promise a contribution to the aforementioned elected officials, candidates, and exploratory committees."

The amendment of this section by Acts 1995, No. 863 has been deemed to supersede its amendment by Acts 1995, No. 1296. Subsection (j) of this section was amended by Acts 1995, No. 1296, § 41, to read as follows:

"(j)(1) Within thirty (30) days following a general election, a candidate shall turn over any balance of campaign funds over expenses incurred as of the day of the election to either:

"(A) The Treasurer of State for the benefit of the General Revenue Fund Account of the State Apportionment Fund;

"(B) An organized political party as defined in § 7-1-101(1); or

"(C) The contributors to the candidate's campaign.

"(2) The balance of campaign funds over expenses incurred to be turned over shall not include:

"(A) An amount equal to the yearly salary, excluding expense allowances, set by Arkansas law for the office sought; and

"(B) Any funds required to reimburse the candidate for personal funds contributed to the campaign or to repay loans made by financial institutions to the candidate and applied to the campaign.

"(3) If an unopposed candidate agrees not to solicit further campaign contributions by filing an affidavit with the Secretary of State declaring such agreement, the candidate may dispose of any surplus of campaign funds prior to a general elec-

tion after the time has passed to declare an intent to be a write-in candidate pursuant to § 7-5-205."

**Amendments.** The 2007 amendment added (g)(4)(C); substituted "at the office where the candidate was required to file his or her campaign contribution and expenditure reports for the previous campaign" for "with the Secretary of State" in (h)(3)(C)(i); and in (h)(4), substituted "that" for "the past" and deleted "a previous" following "to retire."

The 2009 amendment by No. 340 inserted (h)(1)(D), redesignated the remaining subdivision accordingly, and made related and minor stylistic changes.

The 2009 amendment by No. 473 inserted (e)(3) and (e)(4) and redesignated the remaining text accordingly; and inserted (h)(2)(D)(i), redesignated the remaining text, and made related changes.

The 2009 amendment by No. 1204 substituted "loans made by a candidate from his or her own personal funds to the campaign, contributions made by a candidate from his or her personal funds to the campaign" for "a candidate's own contribution from his or her personal funds" in (c), and made a related change.

The 2011 amendment inserted "approved" in (e)(3); added "An approved" at the beginning of (e)(4)(E); in (h)(1), substituted "an election" for "the general election," and inserted "or a candidate has withdrawn"; inserted (h)(2) and redesignated the remaining subdivisions accordingly; substituted "subdivision (h)(4)(B)" for "subdivision (h)(3)(B)" in (h)(4)(B)(ii) and (iii); substituted "subdivision (h)(4)(C)" for "subdivision (h)(3)(C)" in (h)(4)(C)(i); substituted "subdivisions (h)(4)(C)(i) and (ii)" for "subdivisions (h)(3)(C)(i) and (ii)"; and substituted "(h)(4)(D)" for "(h)(3)(D)" in (h)(4)(D)(ii)(a).

**U.S. Code.** Section 501(c)(3) of the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 501(c)(3).

## RESEARCH REFERENCES

**ALR.** Constitutionality, Construction, and Application of Statute or Regulatory Action Respecting Political Advertising — Print Media Cases. 51 A.L.R.6th 359.

Constitutionality, Construction, and Application of Statute or Regulatory Ac-

tivity Respecting Political Advertising Nonprint Media Cases, or Cases Implicating Both Print and Nonprint Media. 53 A.L.R.6th 491.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General As-



sembly, Election Law, Contributions to Candidates, 26 U. Ark. Little Rock L. Rev. 397.

Survey of Legislation, 2005 Arkansas General Assembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Governor Exempt.

#### Constitutionality.

Contributions of \$1000 to candidates for statewide races are not large, and the state lacks the compelling interest necessary to justify further limiting contributions in statewide races; therefore, \$300 limits in former subdivisions (a)(2) and (b)(2) were unconstitutional. *Russell v. Burris*, 978 F. Supp. 1211 (E.D. Ark. 1997), *aff'd in part, reversed in part*, 146 F.3d 563 (8th Cir. 1998).

Limitations in former subdivisions (a)(1) and (b)(1) on contributions to candidates in non-statewide races to \$100 were not unconstitutionally low (except in races for Supreme Court Justice and Court of Appeals Judge). *Russell v. Burris*, 978 F. Supp. 1211 (E.D. Ark. 1997), *aff'd in part, reversed in part*, 146 F.3d 563 (8th Cir. 1998).

Limit of \$100 on contributions to Supreme Court Justices and Court of Appeals Judges was unconstitutionally low, because these judges are elected in statewide races, and under Canon 5C(2) of the Code of Judicial Conduct, candidates for these offices may not personally solicit or accept contributions. *Russell v. Burris*, 978 F. Supp. 1211 (E.D. Ark. 1997), *aff'd in part, reversed in part*, 146 F.3d 563 (8th Cir. 1998).

Substantial disparity between small donor political action committees' (PACs) and approved PACs' abilities to raise money and contribute to candidates is balanced by the facts small donor PACs may only receive contributions from individuals, and approved PACs are not limited in the amount they can contribute overall; this disparity does not violate the approved PACs equal protection rights. *Russell v. Burris*, 978 F. Supp. 1211 (E.D. Ark. 1997), *aff'd in part, reversed in part*, 146 F.3d 563 (8th Cir. 1998).

Whether the \$100 limit in former subsection (a) is narrowly tailored to serve a

compelling state interest was a question of fact; summary judgment on the issue of constitutionality was therefore denied. *Arkansas Right to Life Political Action Comm. v. Butler*, 983 F. Supp. 1209 (W.D. Ark. 1997), *aff'd*, 146 F.3d 558 (8th Cir. 1998).

Whether the \$500 limit in former subsection (k) was narrowly tailored to serve a compelling state interest in preventing an exchange of political services from current and potential office holders was a question of fact; summary judgment on the issue of constitutionality was therefore denied. *Arkansas Right to Life Political Action Comm. v. Butler*, 983 F. Supp. 1209 (W.D. Ark. 1997), *aff'd*, 146 F.3d 558 (8th Cir. 1998).

Whether the blackout period in former subsection (g) was narrowly tailored to serve a compelling state interest in preventing corruption was a question of fact; summary judgment on the issue of constitutionality was therefore denied. *Arkansas Right to Life Political Action Comm. v. Butler*, 983 F. Supp. 1209 (W.D. Ark. 1997), *aff'd*, 146 F.3d 558 (8th Cir. 1998).

The black out period provided for in subsection (g) was not narrowly tailored to serve a compelling state interest and, therefore, was unconstitutional. *Arkansas Right to Life State Political Action Comm. v. Butler*, 29 F. Supp. 2d 540 (W.D. Ark. 1998).

The \$500 limit on contributions to independent expenditure committees is unconstitutional as a matter of law because it is too low to allow meaningful participation in the political process and, thus, is not narrowly tailored to serve the state's alleged compelling interest. *Arkansas Right to Life State Political Action Comm. v. Butler*, 29 F. Supp. 2d 540 (W.D. Ark. 1998).

#### Governor Exempt.

Subsection (a) of this section, as it applies to the office of Governor, is unconstitutional. *Arkansas Right to Life Political Action Comm. v. Butler*, 983 F. Supp. 1209 (W.D. Ark. 1997), *aff'd*, 146 F.3d 558 (8th Cir. 1998).



**7-6-204. Restriction on cash contributions or expenditures — Exception.**

(a) No campaign contribution in excess of one hundred dollars (\$100) or expenditure in excess of fifty dollars (\$50.00) shall be made or received in cash.

(b) All contributions or expenditures in behalf of a campaign activity, other than in-kind contributions and expenditures, in excess of the amounts mentioned in subsection (a) of this section shall be made:

(1) By a written instrument containing the name of the donor and the name of the payee;

(2) By credit card or debit card where the transaction results in a paper record signed by the cardholder, provided that the paper record contains the following information for the cardholder at the time of making the contribution:

- (A) Valid name;
- (B) Complete address;
- (C) Place of business;
- (D) Employer; and
- (E) Occupation; or

(3) By transaction that results in an electronic record created or transmitted by the cardholder where a contribution or expenditure is made through the Internet, provided that the electronic record contains the following information for the cardholder at the time of making the contribution:

- (A) Valid name;
- (B) Complete address;
- (C) Place of business;
- (D) Employer; and
- (E) Occupation.

(c) The payment of filing fees may be in cash even though the amount exceeds fifty dollars (\$50.00). The candidate shall obtain a receipt for the payment and shall report it as a campaign expenditure.

**History.** Acts 1975, No. 788, § 8; 1977, No. 312, § 2; A.S.A. 1947, § 3-1116; Acts 2011, No. 721, § 5.

**Amendments.** The 2011 amendment subdivided (b) as introductory language and (b)(1) and added (b)(2) and (3).

**CASE NOTES****Ticket to Political Fundraiser.**

Cash purchase of a \$125 ticket to a political fundraiser was at least a technical violation of this section. Campaign manager had a right and a legal duty to abide by this section and was reasonable

in directing the refund of the cash contribution after it was mistakenly accepted. *McIntosh v. White*, 582 F. Supp. 1244 (E.D. Ark. 1984), *aff'd in part, reversed in part*, 766 F.2d 337 (8th Cir. Ark. 1985).

**7-6-205. Contributions made indirectly, anonymously, or under assumed names.**

(a) No campaign contribution shall be made to a candidate, a political action committee, an independent expenditure committee, an exploratory committee, a county political party committee, or a political party unless such contribution is made directly to the intended recipient. Provided, it shall be permissible to make a contribution to a candidate's campaign committee instead of directly to the candidate.

(b) No contribution shall be made to or knowingly accepted by a candidate or his or her campaign committee, a political action committee, an independent expenditure committee, an exploratory committee, a county political party committee, or a political party unless the contribution is made in the name by which the person providing the funds for the contribution is identified for legal purposes.

(c)(1) No person shall make an anonymous contribution in support of or opposition to a candidate or campaign committee totalling fifty dollars (\$50.00) or more in a calendar year.

(2) An anonymous contribution of fifty dollars (\$50.00) or more shall not be kept by the intended recipient but shall be promptly paid by the recipient to the Secretary of State for deposit into the State Treasury as general revenues.

(d) Whenever any person provides his or her dependent child with funds and the child uses those funds to make a contribution to a candidate, the contribution shall be attributed to such person for purposes of applying the contribution limit pursuant to § 7-6-203(b).

(e) Campaign contributions may not be made by individuals who are not citizens of the United States or by any other entity which is not organized, existing, or created under the laws of the United States or of any state or other place subject to the jurisdiction of the United States and which does not have its principal place of business in the United States.

**History.** Acts 1975, No. 788, § 9; A.S.A. 1947, § 3-1117; Init. Meas. 1990, No. 1, § 4; Acts 1999, No. 553, § 4; 2007, No. 221, § 3.

**Amendments.** The 2007 amendment inserted "a county political party committee" in (a) and (b).

**7-6-206. Records of contributions and expenditures.**

(a) A candidate, a political party, or a person acting in the candidate's behalf shall keep records of all contributions and expenditures in a manner sufficient to evidence compliance with §§ 7-6-207 — 7-6-210.

(b) The records shall be made available to the Arkansas Ethics Commission and the prosecuting attorney in the district in which the candidate resides, who are delegated the responsibility of enforcing this subchapter, and shall be maintained for a period of four (4) years.

**History.** Acts 1975, No. 788, § 5; 1977, No. 312, § 5; A.S.A. 1947, § 3-1113; Acts 1999, No. 553, § 5; 2007, No. 221, § 4.

in (b), inserted “the Arkansas Ethics Commission and” and substituted “are” for “is”.

**Amendments.** The 2007 amendment,

**7-6-207. Reports of contributions — Candidates for office other than school district, township, municipal, or county office, etc.**

(a) **REPORTS REQUIRED.**

(1) Except as provided in subsection (c) of this section, each candidate for office, other than a school district, township, municipal, or county office, or a person acting in the candidate’s behalf, shall file with the Secretary of State:

(A) For each quarter during a calendar year in which a candidate is not listed on any ballot for election, a quarterly report of all contributions received and expenditures made during that quarter. The quarterly report shall be filed no later than fifteen (15) days after the end of each quarter;

(B) Beginning with the month of January in the calendar year in which a candidate may be listed on any ballot for election, a monthly report of all contributions received and expenditures made during that month. However, for any month in which certain days of that month are included in a preelection report required under subdivision (a)(1)(C) of this section or a final report required under subdivision (a)(1)(D) of this section, no monthly report for that month shall be due. In the case of a primary or runoff election, those days of the month occurring after the date of the election shall be carried forward and included in the next monthly report. The monthly report shall be filed no later than fifteen (15) days after the end of each month, except that the final report, covering the month during which an election is held, shall be filed within thirty (30) days after the end of the month in which the last election is held at which the candidate seeks nomination and after the end of the month in which the general election is held. With respect to a special election, the candidate shall file monthly reports under this section beginning with the month in which the special election candidate’s total campaign contributions or expenditures exceed five hundred dollars (\$500);

(C) No later than seven (7) days prior to any preferential primary election, runoff election, general election, or special election in which the candidate’s name appears on the ballot, a preelection report of all contributions received and expenditures made between the period covered by the previous report and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during that period of time that begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

(D) No later than thirty (30) days after the end of the month in which the candidate’s name has appeared on the ballot in any



primary election, runoff election, or general election, a final report of all contributions received and expenditures made which have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500); and

(E)(i) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed.

(ii) If a candidate withdraws from the campaign, the candidate shall notify the Secretary of State in writing of the withdrawal.

(2) Upon receiving the first report from any candidate, or upon receipt of the candidate's notice of filing for office, the Secretary of State shall provide the candidate with information on the deadlines for filing remaining quarterly, monthly, and preelection reports and shall furnish each candidate with the appropriate forms and instructions for complying with the deadlines. All reports shall be filed on the forms furnished by the Secretary of State, except that computer-generated contribution and expenditure reports shall be accepted by the Secretary of State and the Arkansas Ethics Commission provided that all of the requisite elements are included.

(3) For any report except a preelection report, a report is timely filed if it is either hand delivered or mailed to the Secretary of State, properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on the date that the report is due. A preelection report is timely filed if it is received in the Secretary of State's office no later than seven (7) days prior to the election for which it is filed. The Secretary of State shall accept via facsimile any report, provided the original is received by the Secretary of State within ten (10) days of the date of transmission. The Secretary of State may receive reports in a readable electronic format that is acceptable to the Secretary of State and approved by the commission.

(b) CONTENTS OF REPORTS.

(1) The contribution and expenditure reports required by subsection (a) of this section shall indicate:

(A) The total amount of contributions received with loans stated separately, the total amount of expenditures made during the filing periods, and the cumulative amount of those totals;

(B) The name and address of each person, including the candidate, who made a contribution or contributions that in the aggregate exceeded fifty dollars (\$50.00);

(C) The contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the candidate, and the aggregate contributed for each election;

(D) The name and address of each person, including the candidate, who contributed a nonmoney item, together with a description of the

item, the date of receipt, and the value, not including volunteer service by individuals;

(E) An itemization of all single expenditures made that exceed one hundred dollars (\$100), including the:

(i) Amount of the expenditures;

(ii) Name and address of any person, including the candidate, to whom the expenditure was made; and

(iii) Date the expenditure was made;

(F) A list of all paid campaign workers and the amount the workers were paid;

(G) A list of all expenditures by categories, including, but not limited to:

(i)(a) Television;

(b) Radio;

(c) Print; and

(d) Other advertising;

(ii) Direct mail;

(iii) Office supplies;

(iv) Rent;

(v) Travel;

(vi) Expenses;

(vii) Entertainment; and

(viii) Telephone;

(H) The total amount of all nonitemized expenditures made during the filing period; and

(I) The current balance of campaign funds.

(2)(A) When the candidate's campaign has ended, the final report shall also indicate which option under § 7-6-203(h) was used to dispose of any surplus of campaign funds, the amount of funds disposed of by the candidate, and the amount of funds retained by the candidate in accordance with § 7-6-201(3).

(B) If the candidate's campaign has not ended, disposal of campaign funds shall not be required and the candidate may carry forward any remaining campaign funds to the general primary election, general election, or general runoff election for that same office.

(c) REPORTS NOT REQUIRED.

(1) The candidate or any person acting in the candidate's behalf shall comply with the filings required by this section beginning with the first reporting period, either quarterly, monthly, or preelection, in which his or her total contributions or expenditures exceed five hundred dollars (\$500). A candidate who has not received contributions or made expenditures in excess of five hundred dollars (\$500) shall not be required to file any reports required under this section other than the final report required under subdivision (a)(1)(B) of this section. In calculating the amount of contributions received or expenditures made for purposes of this exception, the payment of the filing fee from the candidate's personal funds shall not be considered as either a contribution or an expenditure.

(2) The preelection reports referenced in subdivision (a)(1)(C) of this section are only required for candidates with opponents in those elections.

(3) An unopposed candidate for an office described in subdivision (a)(1) of this section or any person acting in the unopposed candidate's behalf shall not be required to file the ten-day preelection report required by subdivision (a)(1)(C) of this section.

(d) **FILINGS AND PUBLIC INSPECTION.**

(1)(A) The Secretary of State shall establish a filing system for reports filed pursuant to this section. The reports shall be kept for eight (8) years from the date of filing, catalogued by candidate in chronological order, and made available for public inspection.

(B) After the eight-year period, the Secretary of State shall turn the reports over to the Arkansas History Commission for maintenance and continued public inspection.

(2) The Secretary of State shall furnish to the Arkansas Ethics Commission, no later than thirty (30) days after each filing deadline under this section, a report listing the names of all candidates who have filed for office, the type of report filed by each candidate, and the date the report was received by the Secretary of State.

**History.** Acts 1975, No. 788, § 3; 1977, No. 312, § 1; 1985, No. 896, §§ 1-3; A.S.A. 1947, § 3-1111; Acts 1987, No. 246, § 2; Init. Meas. 1990, No. 1, § 5; Acts 1993, No. 1243, § 1; 1995, No. 1263, § 1; Init. Meas. 1996, No. 1, § 4; Acts 1999, No. 103, § 1; 1999, No. 553, § 6; 2001, No. 564, § 1; 2001, No. 1839, §§ 3, 4; 2007, No. 221, § 5; 2009, No. 1204, § 3; 2011, No. 721, § 6.

**A.C.R.C. Notes.** Init. Meas. 1990, No. 1, § 5, provided, in part, that "For candidates participating in the general election of 1990, the quarterly reports shall be filed for all contributions received and expenditures made after the time period covered by the final report required by the

law in effect on November 6, 1990."

**Amendments.** The 2007 amendment added (a)(1)(E) and made related changes; substituted "When the candidate's campaign has ended, the" for "The" in (b)(2)(A); and added (b)(2)(B).

The 2009 amendment inserted "with loans stated separately" in (b)(1)(A), and made a related change.

The 2011 amendment deleted "the contributor's place of business, employer, occupation, and date of the contribution and the amount contributed" at the end of (b)(1)(B); subdivided (b)(1)(E); and substituted "§ 7-6-201(3)" for "§ 7-6-203(h)" in (b)(2)(A).

## **7-6-208. Reports of contributions — Candidates for school district, township, or municipal office.**

(a) **REPORTS REQUIRED.** Except as provided in subsection (d) of this section, each candidate for school district, township, or municipal office, or a person acting in the candidate's behalf, shall:

(1) No later than seven (7) days prior to any preferential primary election, runoff election, general election, school election, or special election in which the candidate's name appears on the ballot, file a preelection report of all contributions received and expenditures made between the period covered by the previous report, if any, and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during



that period of time that begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

(2) No later than thirty (30) days after the end of the month in which the candidate's name has appeared on the ballot in any preferential primary election, runoff election, general election, school election, or special election, file a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500);

(3) File supplemental reports of all contributions received and expenditures made after the date of preparation of the final report. The supplemental reports shall be filed within thirty (30) days after the receipt of a contribution or the making of an expenditure; and

(4)(A) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, file a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed.

(B) If a candidate withdraws from the campaign, the candidate shall notify the county clerk in writing of the withdrawal.

(b) CONTENTS OF REPORTS.

(1) The contribution and expenditure reports required by subsection (a) of this section shall indicate:

(A) The total amount of contributions received with loans stated separately, the total amount of expenditures made during the filing periods, and the cumulative amount of those totals;

(B) The name and address of each person, including the candidate, who made a contribution or contributions that in the aggregate exceeded fifty dollars (\$50.00);

(C) The contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the candidate and the aggregate contributed for each election;

(D) The name and address of each person, including the candidate, who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(E) An itemization of all single expenditures made that exceeded one hundred dollars (\$100), including the amount of the expenditure, the name and address of any person, including the candidate, to whom the expenditure was made, and the date the expenditure was made;

(F) A list of all paid campaign workers and the amount the workers were paid;

(G) A list of all expenditures by categories, including, but not limited to:

(i)(a) Television;

(b) Radio;

- (c) Print; and
- (d) Other advertising;
- (ii) Direct mail;
- (iii) Office supplies;
- (iv) Rent;
- (v) Travel;
- (vi) Expenses;
- (vii) Entertainment; and
- (viii) Telephone;

(H) The total amount of all nonitemized expenditures made during the filing period; and

(I) The current balance of campaign funds.

(2)(A) When the candidate's campaign has ended, the final report shall also indicate which option under § 7-6-203(h) was used to dispose of any surplus of campaign funds, the amount of funds disposed of by the candidate, and the amount of funds retained by the candidate in accordance with § 7-6-201(3).

(B) If the candidate's campaign has not ended, disposal of campaign funds is not required and the candidate may carry forward any remaining campaign funds to the general primary election, general election, or general runoff election for that same office.

(3)(A) Not later than fourteen (14) days after the deadline for filing for office, the county clerk shall notify each candidate in person or by mail of the deadlines for filing the ten-day preelection and final reports required by subsection (a) of this section and, at that time, furnish each candidate with the appropriate forms and instructions for complying with the deadlines.

(B) If notice is sent by mail, then the notice shall be postmarked within fourteen (14) days after the deadline for filing for office.

(c) **FILING OF REPORTS.** The reports required by this section shall be filed with the county clerk in the county in which the election is held. Reports shall be filed on the appropriate forms furnished by the Secretary of State.

(d) **REPORTS NOT REQUIRED.**

(1) A candidate who has not received contributions or made expenditures in excess of five hundred dollars (\$500) shall not be required to file any preelection reports required under subdivision (a)(1) of this section. In calculating the amount of contributions received or expenditures made for purposes of this exception, the payment of the filing fee from the candidate's personal funds shall not be considered as either a contribution or an expenditure.

(2) The preelection reports referenced in subdivision (a)(1) of this section are required only for candidates with opponents in those elections.

**History.** Acts 1975, No. 788, § 3; 1977, No. 312, § 1; A.S.A. 1947, § 3-1111; Acts 1987, No. 246, § 2; 1993, No. 1243, § 2; Init. Meas. 1996, No. 1, § 5; Acts 1999,

No. 553, §§ 7-9; 2001, No. 1839, § 5; 2003, No. 195, § 4; 2007, No. 221, § 6; 2009, No. 1204, § 4; 2011, No. 721, § 7.

**Amendments.** The 2007 amendment

added (a)(4) and made related changes; and substituted “When the candidate’s campaign has ended, the” for “The” in (b)(2)(A); and added (b)(2)(B).

The 2009 amendment inserted “with loans stated separately” in (b)(1)(A), and made a related change.

The 2011 amendment, in (a)(2), inserted “the end of the month in which the candi-

date’s name has appeared on the ballot in” and deleted “in which the candidate’s name has appeared on the ballot” following “special election”; deleted “the contributor’s place of business, employer, occupation, and date of the contribution and the amount contributed” at the end of (b)(1)(B); and substituted “§ 7-6-201(3)” for “§ 7-6-203(h)” in (b)(2)(A).

## **7-6-209. Reports of contributions — Candidates for county office.**

(a) **REPORTS REQUIRED.** Except as provided in subsection (d) of this section, each candidate for county office or a person acting in the candidate’s behalf shall:

(1) No later than seven (7) days prior to any preferential primary election, runoff election, general election, or special election in which the candidate’s name appears on the ballot, file a preelection report of all contributions received and expenditures made between the period covered by the previous report, if any, and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during that period of time that begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

(2) No later than thirty (30) days after the end of the month in which the candidate’s name has appeared on the ballot in any preferential primary election, runoff election, general election, or special election, file a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500);

(3) File supplemental reports of all contributions received and expenditures made after the date of preparation of the final report, and the supplemental reports shall be filed within thirty (30) days after the receipt of a contribution or the making of an expenditure; and

(4)(A) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed.

(B) If a candidate withdraws from the campaign, the candidate shall notify the county clerk in writing of the withdrawal.

(b) **CONTENTS OF REPORTS.**

(1) The contribution and expenditure reports required by subsection (a) of this section shall indicate:

(A) The total amount of contributions received with loans stated separately, the total amount of expenditures made during the filing periods, and the cumulative amount of those totals;



(B) The name and address of each person, including the candidate, who made a contribution or contributions that in the aggregate exceeded fifty dollars (\$50.00);

(C) The contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the candidate, and the aggregate contributed for each election;

(D) The name and address of each person, including the candidate, who contributed a nonmonetary item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(E) An itemization of all single expenditures made that exceeded one hundred dollars (\$100), including the amount of the expenditure, the name and address of any person, including the candidate, to whom the expenditure was made, and the date the expenditure was made;

(F) A list of all paid campaign workers and the amount the workers were paid;

(G) A list of all expenditures by categories, including, but not limited to:

- (i)(a) Television;
- (b) Radio;
- (c) Print; and
- (d) Other advertising;
- (ii) Direct mail;
- (iii) Office supplies;
- (iv) Rent;
- (v) Travel;
- (vi) Expenses;
- (vii) Entertainment; and
- (viii) Telephone;

(H) The total amount of all nonitemized expenditures made during the filing period; and

(I) The current balance of campaign funds.

(2)(A) When the candidate's campaign has ended, the final report shall also indicate which option under § 7-6-203(h) was used to dispose of any surplus of campaign funds, the amount of funds disposed of by the candidate, and the amount of funds retained by the candidate in accordance with § 7-6-201(3).

(B) If the candidate's campaign has not ended, disposal of campaign funds is not required and the candidate may carry forward any remaining funds in the campaign to the general primary election, general election, or general runoff election for that same office.

(3)(A) Not later than fourteen (14) days after the deadline for filing for office, the county clerk shall notify each candidate in person or by mail of the deadlines for filing the ten-day preelection and final reports required by subsection (a) of this section and, at that time, furnish each candidate with the appropriate forms and instructions for complying with the deadlines.

(B) If notice is sent by mail, then the notice shall be postmarked within fourteen (14) days after the deadline for filing for office.

(c) **FILING OF REPORTS.** The reports required by this section shall be filed with the county clerk in the county in which the election is held. Reports shall be filed on the appropriate forms furnished by the Secretary of State.

(d) **REPORTS NOT REQUIRED.** (1) A candidate who has not received contributions or made expenditures in excess of five hundred dollars (\$500) shall not be required to file any preelection reports required under subdivision (a)(1) of this section. In calculating the amount of contributions received or expenditures made for purposes of this exception, the payment of the filing fee from the candidate's personal funds shall not be considered as either a contribution or an expenditure.

(2) The preelection reports referenced in subdivision (a)(1) of this section are required only for candidates with opponents in those elections.

**History.** Acts 1975, No. 788, § 3; 1977, No. 312, § 1; A.S.A. 1947, § 3-1111; Acts 1987, No. 246, § 2; 1993, No. 1243, § 3; Init. Meas. 1996, No. 1, § 6; Acts 1999, No. 553, §§ 10-12; 2001, No. 1839, § 6; 2003, No. 195, § 5; 2007, No. 221, § 7; 2009, No. 1204, § 5; 2011, No. 721, § 8.

**Amendments.** The 2007 amendment added (a)(4) and made related changes; substituted "When the candidate's campaign has ended, the" for "The" in (b)(2)(A); and added (b)(2)(B).

The 2009 amendment inserted "with loans stated separately" in (b)(1)(A), and made a related change.

The 2011 amendment, in (a)(2), inserted "the end of the month in which the candidate's name has appeared on the ballot in" and deleted "in which the candidate's name has appeared on the ballot" following "special election"; deleted "the contributor's place of business, employer, occupation, and date of the contribution and the amount contributed" at the end of (b)(1)(B); and substituted "§ 7-6-201(3)" for "§ 7-6-203(h)" in (b)(2)(A).

## **7-6-210. Reports of contributions — Personal loans.**

(a)(1) The transfer of a candidate's own personal funds to his or her campaign shall be reported as either a loan from the candidate to his or her campaign or a contribution from the candidate to his or her campaign.

(2) In the event the transfer of such funds is reported as a loan from the candidate to his or her campaign, the campaign funds may be used to repay the candidate for the funds loaned by the candidate to his or her campaign.

(3) In the event the transfer of the funds is reported as a contribution from the candidate to his or her campaign, the campaign funds may not be used to reimburse the candidate for the funds contributed by the candidate to his or her campaign.

(b)(1) A personal loan made to a candidate by a financial institution that is applied toward a candidate's campaign shall be reported as a loan from the candidate to his or her campaign.

(2) The name of the financial institution, the amount of the loan, and the name of the guarantor, if any, also shall be reported.

**History.** Acts 1975, No. 788, § 3; 1977, No. 312, § 1; A.S.A. 1947, § 3-1111; Acts 1987, No. 246, § 2; 2009, No. 1204, § 6.

**Amendments.** The 2009 amendment inserted present (a); redesignated former

(a) and (b) as (b)(1) and (b)(2); substituted “loan from the candidate to his or her campaign” for “campaign contribution, as required by this subchapter” in (b)(1); and made minor stylistic changes.

## **7-6-211, 7-6-212. [Repealed.]**

**Publisher’s Notes.** These sections, concerning exemption from filing reports of contributions and reports of expenditures, were repealed by Acts 1999, No. 553, §§ 13, 14. The sections were derived from the following sources:

7-6-211. Acts 1975, No. 788, § 3; A.S.A. 1947, § 3-1111.

7-6-212. Acts 1975, No. 788, § 4; A.S.A. 1947, § 3-1112; Acts 1987, No. 246, § 3.

## **7-6-213. Verification of reports.**

All reports required to be filed by the provisions of this subchapter shall be verified by affidavit by the candidate or a person acting in the candidate’s behalf stating that to the best of his or her knowledge and belief the information so disclosed is a complete, true, and accurate financial statement of the candidate’s campaign contributions or expenditures.

**History.** Acts 1975, No. 788, § 6; A.S.A. 1947, § 3-1114.

## **7-6-214. Publication of reports.**

(a) Upon proper filing, the information required in §§ 7-6-207 — 7-6-210 of this subchapter shall constitute a public record and shall be available within twenty-four (24) hours of the reporting deadline to all interested persons and the news media.

(b) The Secretary of State shall post reports of contributions required in § 7-6-207 on his or her official website.

**History.** Acts 1975, No. 788, § 7; A.S.A. 1947, § 3-1115; 2001, No. 564, § 2.

## **7-6-215. Registration and reporting by approved political action committees.**

(a)(1)(A) To qualify as an approved political action committee, the political action committee shall register with the Secretary of State within fifteen (15) days after accepting contributions during a calendar year that exceed five hundred dollars (\$500) in the aggregate.

(B) Registration shall be annually renewed by January 15, unless the political action committee has ceased to exist.



(C) Registration shall be on forms provided by the Secretary of State, and the contents therein shall be verified by an affidavit of an officer of the political action committee.

(2)(A) The political action committee shall maintain for a period of four (4) years records evidencing the name, address, and place of employment of each person that contributed to the political action committee, along with the amount contributed.

(B) Furthermore, the political action committee shall maintain for a period of four (4) years records evidencing the name and address of each candidate, ballot question committee, legislative question committee, political party, county political party committee, or other political action committee that received a contribution from the political action committee, along with the amount contributed.

(3)(A) The political action committee shall designate a resident agent who shall be an individual who resides in this state.

(B) No contribution shall be accepted from a political action committee and no expenditure shall be made by a political action committee that has not registered and does not have a resident agent.

(C) It shall be unlawful for a prohibited political action committee as defined in § 7-6-201 to make a contribution to a:

- (i) Ballot question committee;
- (ii) Legislative question committee;
- (iii) Political party;
- (iv) Political party committee; or
- (v) Political action committee.

(4)(A) An out-of-state political action committee, including a federal political action committee, shall be required to comply with the registration and reporting provisions of this section if the committee contributes more than five hundred dollars (\$500) in a calendar year to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees within this state.

(B) Subdivision (a)(4)(A) of this section shall not apply to:

(i) The national committee of any political party that is registered with the Federal Election Commission;

(ii) Any federal candidate committee that is registered with the Federal Election Commission;

(iii) Funds which a subordinate committee of the national committee of any political party that is registered with the Federal Election Commission transfers to the federal account of an organized political party as defined under § 7-1-101; or

(iv) Funds which a political action committee that is registered with the Federal Election Commission transfers to the federal account of an organized political party as defined under § 7-1-101.

(b) The registration form of an approved political action committee shall contain the following information:

(1) The name, address, and, where available, phone number of the political action committee and the name, address, phone number, and

place of employment of each of its officers, provided if the political action committee's name is an acronym, then both it and the words forming the acronym shall be disclosed;

(2) The professional, business, trade, labor, or other interests represented by the political action committee, including any individual business, organization, association, corporation, labor organization, or other group or firm whose interests will be represented by the political action committee;

(3) The full name and street address, city, state, and zip code of each financial institution the political action committee uses for purposes of receiving contributions or making expenditures within this state;

(4) A written acceptance of designation as a resident agent;

(5) A certification by a political action committee officer, under penalty of false swearing, that the information provided on the registration is true and correct; and

(6) A clause submitting the political action committee to the jurisdiction of the State of Arkansas for all purposes related to compliance with the provisions of this subchapter.

(c)(1) When a committee makes a change to any information required in subsection (b) of this section, an amendment shall be filed within ten (10) days to reflect the change.

(2) A committee failing to file an amendment shall be subject to a late filing fee of ten dollars (\$10.00) for each day the change is not filed.

(d)(1) Within fifteen (15) calendar days after the end of each calendar quarter, a political action committee shall file a quarterly report with the Secretary of State, including the following information:

(A) The total amount of contributions received and the total amount of contributions made during the filing period and the cumulative amount of those totals;

(B) The current balance of political action committee funds;

(C) The name and address of each person that made a contribution or contributions to the political action committee that exceeded five hundred dollars (\$500) in the aggregate during the calendar year, the contributor's place of business, employer, occupation, the date of the contribution, the amount contributed, and the total contributed for the year;

(D) The name and address of each candidate, ballot question committee, legislative question committee, political party, county political party committee, or other political action committee, if any, to whom or which the political action committee made a contribution or contributions that exceeded fifty dollars (\$50.00) in the aggregate during the filing period, with the amount contributed and the election for which the contribution was made;

(E) The name and address of each candidate, ballot question committee, legislative question committee, political party, county political party committee, or other political action committee, if any, to whom or which the political action committee contributed a nonmonetary item, together with a description of the item, the date the item was contributed, and the value of the item; and



(F) The total amount of expenditures made for administrative expenses and for each single expenditure that exceeded one hundred dollars (\$100), an itemization including the amount of the expenditure, the name and address of the person to whom the expenditure was made, and the date the expenditure was made.

(2) The information required in subdivision (d)(1)(C)-(F) of this section may be provided in the form of schedules attached to the report.

(3) The reports shall be verified by an affidavit of an officer of the political action committee stating that to the best of his or her knowledge and belief the information so disclosed is a complete, true, and accurate financial statement of the political action committee's contributions received and made.

(4)(A) A report is timely filed if it is either delivered by hand or mailed to the Secretary of State, properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on the date that the report is due.

(B) The Secretary of State shall accept via facsimile any report if the original is received by the Secretary of State within ten (10) days of the date of transmission.

(C) The Secretary of State may receive reports in a readable electronic format that is acceptable to the Secretary of State and approved by the Arkansas Ethics Commission.

**History.** Init. Meas. 1990, No. 1, § 6; Init. Meas. 1996, No. 1, § 7; Acts 1999, No. 553, §§ 15-17; 2001, No. 1839, § 7; 2005, No. 2006, § 2; 2007, No. 221, § 8; 2009, No. 473, § 5; 2011, No. 721, § 9.

**Amendments.** The 2007 amendment substituted "designate a resident agent who shall be an individual who resides in" for "appoint a treasurer who is a qualified elector of" in (a)(3)(A); inserted the (a)(4)(A) designation and inserted (a)(4)(B); in (a)(4)(A), inserted "including a federal committee," deleted "including the appointment of a treasurer who is a qualified elector of this state and the establishment of an account in a depository within this state" following "this section," inserted "independent expenditure committees" and "within this state"; in the introductory paragraph of (b), deleted "approved political action committee shall disclose on the" preceding "registration" and inserted "of an approved political action committee shall contain"; rewrote

(b)(4); substituted "designation as a resident agent" for "appointment by the treasurers" in (b)(5); added (b)(6) and (b)(7); added (c) and redesignated the remaining subsections accordingly; inserted present (d)(1)(E) and redesignated former (d)(1)(E) as present (d)(1)(F); deleted former (d)(1)(F); and added (d)(2) and redesignated the remaining subsections accordingly; and made related changes.

The 2009 amendment inserted (a)(3)(C); and substituted "resident agent" for "treasurer" in (a)(3)(B).

The 2011 amendment inserted "ballot question committee, legislative question committee, political party, county political party committee, or other political action committee" in (a)(1)(B); deleted "independent expenditure committees" following "party committees" in (a)(4)(A); inserted "during the calendar year" in (d)(1)(C); and, in (d)(1)(D) and (E), inserted "ballot question committee, legislative question committee, political party, county political party committee" and "other."



**7-6-216. Registration and reports by exploratory committees.**

(a)(1) An exploratory committee shall register with the appropriate filing office within fifteen (15) days after receiving contributions during a calendar year which, in the aggregate, exceed five hundred dollars (\$500).

(2)(A) For a state or district office, the place of filing shall be the Secretary of State's office.

(B) For a county, municipal, township, or school district office, the place of filing shall be the county clerk's office.

(3) Registration shall be on forms provided by the Secretary of State and the contents therein shall be verified by an affidavit of an officer of the committee.

(b) An exploratory committee shall disclose on the registration form the name, address, and, where available, phone number of the committee and each of its officers. It shall also disclose the individual person who, upon becoming a candidate, is intended to receive campaign contributions from the committee.

(c) Within thirty (30) days of the end of each month, an exploratory committee shall file a report with the appropriate filing office indicating:

(1) The total amount of contributions received during the filing period;

(2) The name and address of each person who has made a contribution which, in the aggregate, exceeds fifty dollars (\$50.00), along with the contributor's principal place of business, employer, occupation, and the amount contributed; and

(3) The total amount of expenditures made and for each single expenditure which exceeds one hundred dollars (\$100) an itemization, including the amount of the expenditure, the name and address of the person to whom the expenditure was made, and the date the expenditure was made.

(d)(1) The first report shall be filed for the month in which the committee files its registration. The final report shall be filed within thirty (30) days after the end of the month in which the committee either transfers its contributions to a candidate's campaign or no longer accepts contributions.

(2) The committee shall not accept contributions after the filing of a final report.

**History.** Init. Meas. 1990, No. 1, § 6; Acts 1999, No. 553, § 18; 2001, No. 1839, § 8; 2007, No. 221, § 9; 2009, No. 473, § 6; 2011, No. 721, § 10.

**Amendments.** The 2007 amendment added the (d)(1) designation and added (d)(2).

The 2009 amendment inserted (a)(2) and redesignated the remaining text accordingly.

The 2011 amendment substituted "appropriate filing office" for "Secretary of State" in (a)(1) and (c).

**7-6-217. Creation of Arkansas Ethics Commission.**

(a)(1) The Arkansas Ethics Commission shall be composed of five (5) members, one (1) each appointed by the Governor, Attorney General, Lieutenant Governor, Speaker of the House of Representatives, and President Pro Tempore of the Senate.

(2) Members of the commission shall be appointed for terms of five (5) years and shall continue to serve until their successors have been appointed and have taken the official oath.

(3)(A) No person may be appointed to serve consecutive terms on the commission.

(B) Provided, any commissioner who has been appointed to serve two (2) years or less of an unexpired term shall be eligible for an appointment to a subsequent five-year term.

(4) In the event of a vacancy on the commission, a successor shall be appointed within thirty (30) days to serve the remainder of the unexpired term, such appointment to be made by the official holding the office responsible for appointing the predecessor.

(b)(1) In making appointments to the commission, the appointing officials shall ensure that at least one (1) member of a minority race, one (1) woman, and one (1) member of the minority political party, as defined in § 7-1-101, serves on the commission.

(2) Any person appointed as a member of the minority political party must have voted in the preferential primaries of the minority political party in the last two (2) primaries in which he or she has voted.

(c)(1) No member of the commission shall be a federal, state, or local government official or employee, an elected public official, a candidate for public office, a lobbyist as defined in § 21-8-402(11), or an officer or paid employee of an organized political party as defined in § 7-1-101.

(2) During the entire term of service on the commission, a commissioner shall be prohibited from raising funds for, making contributions to, providing services to, or lending his or her name in support of any candidate for election to a state, county, municipal, or school board office under the laws of Arkansas or in support of a ballot issue or issues submitted or intended to be submitted to the voters of the State of Arkansas, or any of its political subdivisions, excluding the exercise of the right to vote or the mere signing of an initiative or referendum petition. Employees of the commission shall be similarly prohibited.

(d)(1) The commission shall elect its chair.

(2)(A) A majority of the membership of the commission shall constitute a quorum for conducting business.

(B) No action shall be taken except by an affirmative vote of a majority of those present and voting.

(C) No sanctions shall be imposed without the affirmative vote of at least three (3) members of the commission who are physically present at a commission meeting.

(3) The vote of each member voting on any action shall be a public record.

(e) Members of the commission shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(f) The commission shall meet at such times as may be provided by its rules, upon call of the chair, or upon written request to the chair of any three (3) members.

(g) The commission shall have the authority to:

(1) Pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., promulgate reasonable rules and regulations to implement and administer the requirements of this subchapter, as well as § 7-9-401 et seq., § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq., and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings;

(2) Issue advisory opinions and guidelines on the requirements of § 7-1-103(a)(1)-(4), (6), and (7), this subchapter, § 7-9-401 et seq., § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq.;

(3) After a citizen complaint has been submitted to the commission, investigate alleged violations of § 7-1-103(a)(1)-(4), (6), and (7), this subchapter, § 7-9-401 et seq., § 21-1-401 et seq., § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq. and render findings and disciplinary action thereon;

(4) Pursuant to commission investigations, subpoena any person or the books, records, or other documents being held by any person and take sworn statements;

(5) Administer oaths for the purpose of taking sworn testimony of witnesses and conduct hearings;

(6) Hire a staff and retain legal counsel;

(7) Approve forms prepared by the Secretary of State pursuant to this subchapter, § 7-9-401 et seq., § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq.; and

(8)(A) File suit in the Pulaski County Circuit Court or in the circuit court of the county wherein the respondent resides or, pursuant to § 16-17-706, in the small claims division established in any district court in the State of Arkansas, to obtain a judgment for the amount of any fine imposed pursuant to § 7-6-218(b)(4)(B)(i)-(iii), or to enforce an order of the commission requiring the filing or amendment of a disclosure form.

(B) Said action by the court shall not involve further judicial review of the commission's actions.

(C) The fee normally charged for the filing of a suit in any of the circuit courts in the State of Arkansas shall be waived on behalf of the commission.



(h) When in the course of an investigation the commission issues subpoenas to financial institutions for records or information regarding a person who is the subject of the investigation, the commission shall provide the subject of the investigation with reasonable notice of the subpoenas and an opportunity to respond.

**History.** Init. Meas. 1990, No. 1, § 6; Acts 1995, No. 349, § 1; 1995, No. 352, § 1; 1997, No. 250, § 43; 1999, No. 553, §§ 19-21; 2001, No. 1839, §§ 9, 10; 2003, No. 195, § 6; 2003, No. 1185, § 6; 2005, No. 1284, § 5.

**A.C.R.C. Notes.** As enacted by Init. Meas. 1990, No. 1, § 6, subsection (a) of this section began "Effective January 2, 1991."

Init. Meas. 1990, No. 1, § 6, provided, in part, that the initial commission shall be appointed no later than January 2, 1991.

As amended by identical Acts 1995, Nos.

349 and 352, subdivision (a)(3)(B) ended: "Those commissioners currently serving shall complete their current term."

**Publisher's Notes.** Init. Meas. 1990, No. 1, § 6, provided, in part, that members of the commission shall serve for a term of five (5) years, except that the initial members shall draw lots at their first meeting to determine their terms of service, with one member serving one (1) year, one member serving two (2) years, one member serving three (3) years, one member serving four (4) years, and one member serving five (5) years.

## RESEARCH REFERENCES

**Ark. L. Rev. Note,** Spradlin v. Arkansas Ethics Commission: A Hard-Line Approach to Separation of Powers, 48 Ark. L. Rev. 755.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2005 Arkansas General Assembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Disciplinary Actions.  
Minority Political Party.

### Constitutionality.

By designating the Chief Justice of the Supreme Court to appoint one of the members of the Commission, the portion of Init. Meas. 1990, No. 1 creating the commission, codified as this section, violates the separation powers and is unconstitutional. Spradlin v. Arkansas Ethics Comm'n, 314 Ark. 108, 858 S.W.2d 684 (1993).

### Disciplinary Actions.

The commission has no power whatever to make any orders, much less to enforce

them; the only "disciplinary action" it can take under this section is to make public a letter declaring what it has found in the way of a violation. Spradlin v. Arkansas Ethics Comm'n, 314 Ark. 108, 858 S.W.2d 684 (1993).

### Minority Political Party.

There is no objective standard by which one can determine whether an appointee is a "member of a minority political party," and the appellate court would give great deference to the discretion of the appointer and great weight to the circuit court as the fact-finder on that issue. Spradlin v. Arkansas Ethics Comm'n, 314 Ark. 108, 858 S.W.2d 684 (1993).

**Cited:** Spradlin v. Arkansas Ethics Comm'n, 310 Ark. 458, 837 S.W.2d 463 (1992).

## 7-6-218. Citizen complaints.

(a)(1) Any citizen may file a complaint with the Arkansas Ethics Commission against a person covered by this subchapter, by § 7-1-103(a)(1)-(4), (6), or (7), § 7-9-401 et seq., § 21-1-401 et seq., or

§ 21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq. for an alleged violation of the subchapters. For purposes of this subdivision (a)(1), the Arkansas Ethics Commission shall be considered a citizen.

(2) A complaint must be filed within four (4) years after the alleged violation occurred. If the alleged violation is the failure to file a report or the filing of an incorrect report, the complaint must be filed within four (4) years after the date the report was due.

(b)(1)(A) Upon a complaint stating facts constituting an alleged violation signed under penalty of perjury by any person, the commission shall investigate the alleged violation of this subchapter or § 7-1-103(a)(1)-(4), (6), or (7), § 7-9-401 et seq., § 21-1-401 et seq., § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq.

(B) The commission shall immediately notify any person under investigation of the investigation and of the nature of the alleged violation.

(C) The commission in a document shall advise the complainant and the respondent of the final action taken, together with the reasons for the action, and such document shall be a public record.

(D) Filing of a frivolous complaint shall be a violation of this subchapter. For purposes of this section, "frivolous" means clearly lacking any basis in fact or law. In any case in which the commission has dismissed a complaint, the respondent may request in writing that the commission make a finding as to whether or not the complaint filed was frivolous. In the event that the commission finds that the complaint was frivolous, the respondent may file a complaint seeking sanctions as provided in § 7-6-218(b)(4).

(2) If, after the investigation, the commission finds that probable cause exists for a finding of a violation, the respondent may request a hearing. The hearing shall be a public hearing.

(3)(A) The commission shall keep a record of its investigations, inquiries, and proceedings.

(B)(i) All proceedings, records, and transcripts of any investigations or inquiries shall be kept confidential by the commission, unless the respondent requests disclosure of documents relating to investigation of the case, in case of a hearing under subdivision (b)(2) of this section, or in case of judicial review of a commission decision pursuant to § 25-15-212.

(ii) However, through its members or staff, the commission may disclose confidential information to proper law enforcement officials, agencies, and bodies or as may be required to conduct its investigation.

(C) Thirty (30) days after any final adjudication in which the commission makes a finding of a violation, all records relevant to the investigation and upon which the commission has based its decision,

except working papers of the commission and its staff, shall be open to public inspection.

(4) If the commission finds a violation of this subchapter, § 7-1-103(a)(1)-(4), (6), or (7), § 21-1-401 et seq., § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq., then the commission shall do one (1) or more of the following, unless good cause be shown for the violation:

(A) Issue a public letter of caution or warning or reprimand;

(B)(i) Notwithstanding the provisions of §§ 7-6-202, 7-9-409, 21-8-403, and 21-8-903, impose a fine of not less than fifty dollars (\$50.00) nor more than two thousand dollars (\$2,000) for negligent or intentional violation of this subchapter or § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., and § 21-8-901 et seq.

(ii) The commission shall adopt rules governing the imposition of such fines in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(iii) All moneys received by the commission in payment of fines shall be deposited into the State Treasury as general revenues;

(C) Order the respondent to file or amend a statutorily required disclosure form; or

(D)(i) Report its finding, along with such information and documents as it deems appropriate, and make recommendations to the proper law enforcement authorities.

(ii) When exercising the authority provided in this subdivision (b)(4), the commission is not required to make a finding of a violation of the laws under its jurisdiction.

(5)(A) The commission shall complete its investigation of a complaint filed pursuant to this section and take final action within one hundred fifty (150) days of the filing of the complaint. If a hearing under subdivision (b)(2) of this section or other hearing of adjudication is conducted, all action on the complaint by the commission shall be completed within one hundred eighty (180) days.

(B) However, such time shall be tolled during the pendency of any civil action, civil appeal, or other judicial proceeding involving those particular commission proceedings.

(c) Any final action of the commission under this section shall constitute an adjudication for purposes of judicial review under § 25-15-212.

**History.** Init. Meas. 1990, No. 1, § 6; Acts 1995, No. 349, § 2; 1995, No. 352, § 2; 1999, No. 553, § 22; 2001, No. 1839, §§ 11-13; 2003, No. 195, § 7; 2007, No. 221, § 10.

**A.C.R.C. Notes.** As originally enacted by Init. Meas. 1990, No. 1, § 6 subsection (a) began "Effective July 1, 1991."

**Amendments.** The 2007 amendment, in (b)(4)(B)(i), substituted "fifty dollars (\$50.00)" for "twenty-five dollars (\$25.00)" and "two thousand dollars (\$2,000)" for "one thousand dollars (\$1,000)" and deleted "§ 21-8-501 et seq." preceding "§ 21-8-601."



## CASE NOTES

## ANALYSIS

Powers.

Validity of Statute.

**Powers.**

The commission has no power whatever to make any orders, much less to enforce them; the only "disciplinary action" it can take under § 7-6-217(h)(2) (now (g)(3)) is to make public a letter declaring what it has found in the way of a violation. *Spradlin v. Arkansas Ethics Comm'n*, 314 Ark. 108, 858 S.W.2d 684 (1993).

While the commission may impose fines for violations, it has no power to prosecute under this subchapter; instead, the commission must refer the violations to the "proper law enforcement authorities" who would then pursue a prosecution. *Arkansas Right to Life State Political Action Comm. v. Butler*, 972 F. Supp. 1187 (W.D. Ark. 1997).

**Validity of Statute.**

State Attorney, as the government official charged with administering and enforcing Init. Meas. 1996, No. 1, and as the

proper law enforcement authority to handle violations of the Act, was properly named as a defendant in action challenging the validity of the Act. *Arkansas Right to Life State Political Action Comm. v. Butler*, 972 F. Supp. 1187 (W.D. Ark. 1997).

Plaintiffs had standing to pursue a pre-enforcement challenge of Init. Meas. 1996, No. 1 because the Act has been recently enacted, it facially restricted the plaintiffs, and violation of the statute could subject the plaintiffs to criminal prosecution. *Arkansas Right to Life State Political Action Comm. v. Butler*, 972 F. Supp. 1187 (W.D. Ark. 1997).

Plaintiffs were not required to subject themselves to either the fine or term of imprisonment found in former § 7-6-202 or the penalties outlined in this section in order to challenge the constitutionality of the new restrictions; it is not required that a party expose herself to arrest or prosecution under a criminal statute in order to challenge the statute in federal court. *Arkansas Right to Life State Political Action Comm. v. Butler*, 972 F. Supp. 1187 (W.D. Ark. 1997).

**7-6-219. Retiring a campaign debt.**

(a)(1) Any person who was a candidate and has a campaign debt from an election that has ended may solicit funds and hold fundraisers to retire the campaign debt.

(2) The contributions received shall be treated as campaign contributions to the person's previous campaign, and all campaign contribution limits shall continue to apply.

(b) Contributors shall be given notice that the campaign contributions are for the purpose of retiring a campaign debt. Any invitation to or notice of a fundraiser to retire a campaign debt of a previous campaign shall state that the funds are to retire a campaign debt.

(c) A person shall file a campaign contribution and expenditure report concerning a campaign debt if, since the last report concerning the debt, the person has received cumulative contributions in excess of five hundred dollars (\$500). The report shall be filed not later than fifteen (15) days after a calendar quarter in which a report becomes required. No report is required in any calendar quarter in which the cumulative contribution or cumulative expenditure limit has not been exceeded since the person's last report.

**History.** Acts 1993, No. 1209, § 1; 1997, No. 139, § 1.

**7-6-220. Reporting of independent expenditures.**

(a) A person who or an independent expenditure committee which makes independent expenditures in an aggregate amount or value in excess of five hundred dollars (\$500) in a calendar year shall file reports with the Secretary of State:

(1) No later than thirty (30) days prior to preferential primary elections, general elections, and special elections covering the period ending thirty-five (35) days prior to such elections;

(2) No later than seven (7) days prior to preferential primary elections, runoff elections, general elections, and special elections covering the period ending ten (10) days prior to such elections; and

(3) As for a final report, no later than thirty (30) days after the end of the month in which the last election is held at which the candidate seeks nomination or election.

(b) Such reports shall include:

(1) In the case of an individual making such an expenditure, the name, address, telephone number, principal place of business, employer, and occupation of the individual;

(2) In the case of a committee, the name, address, employer, and occupation of its officers;

(3) In the case of a person who is not an individual, the principal name of the entity, the address, and the name, address, employer, and occupation of its officers; and

(4) The same information required of candidates for office other than school district, township, municipal, or county office as set forth in § 7-6-207(b)(1).

(c) The information required in § 7-6-207(b)(1) may be provided in the form of a schedule or schedules attached to the report.

(d) The report shall be verified by an affidavit of an officer of the committee stating that to the best of his or her knowledge and belief the information disclosed is a complete, true, and accurate financial statement of the committee's contributions received and made.

(e)(1) A report is timely filed if it is either delivered by hand or mailed to the Secretary of State, properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on the date that the report is due.

(2) The Secretary of State shall accept via facsimile any report if the original is received by the Secretary of State within ten (10) days of the date of transmission.

(3) The Secretary of State may receive reports in a readable electronic format that is acceptable to the Secretary of State and approved by the Arkansas Ethics Commission.

**History.** Init. Meas. 1996, No. 1, § 8; Acts 2001, No. 1839, § 14; 2005, No. 1284, § 6; 2011, No. 721, § 11.

substituted "7-6-207(b)(1)" for "7-6-207(b)(1)(A)-(I)" in (b)(4); and added (c) through (e).

**Amendments.** The 2011 amendment

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2005 Arkansas General Assembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.

**7-6-221. [Repealed.]**

**Publisher's Notes.** This section, concerning the independent expenditure disclosure, was repealed by Acts 2001, No. 1839, § 15. The section was derived from Init. Meas. 1996, No. 1, § 9.

**7-6-222. Tax credits for certain individual political contributions.**

(a) Pursuant to regulations to be adopted by the Department of Finance and Administration, a credit against individual Arkansas income taxes shall be allowed for money contributions made by the taxpayer in a taxable year to one (1) or more of the following:

(1) A candidate seeking nomination or election to a public office at an election or to the candidate's campaign committee;

(2) An approved political action committee as defined in § 7-6-201; or

(3) An organized political party as defined in § 7-1-101.

(b) The credit allowed by subsection (a) of this section shall be the aggregate contributions, not to exceed fifty dollars (\$50.00), on an individual tax return, or the aggregate contributions, not to exceed one hundred dollars (\$100), on a joint return.

(c) Credits for contributions qualifying under this section and made prior to April 15 in a calendar year may be applied to the return filed for the previous taxable year.

**History.** Init. Meas. 1996, No. 1, § 10; Acts 1999, No. 1446, § 1; 2003, No. 774, § 1; 2005, No. 1284, § 7; 2007, No. 221, § 11.

**Publisher's Notes.** Acts 1999, No. 1446, § 2, provided: "The provisions of this act are effective for tax years begin-

ning on and after January 1, 1999."

**Amendments.** The 2007 amendment deleted former (a)(2) and redesignated the remaining subsections accordingly.

**Effective Dates.** Acts 2003, No. 774, § 6: effective for tax years beginning on and after Jan. 1, 2003.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2005 Arkansas General Assembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.

## CASE NOTES

**Constitutionality.**

A genuine issue of material fact existed as to whether this section infringed on First Amendment rights; summary judgment on the issue of constitutionality was therefore denied. Arkansas Right to Life

Political Action Comm. v. Butler, 983 F. Supp. 1209 (W.D. Ark. 1997), *aff'd*, 146 F.3d 558 (8th Cir. 1998).

**Cited:** Russell v. Burris, 978 F. Supp. 1211 (E.D. Ark. 1997).



### 7-6-223. Reports of contributions by political parties.

(a) Within fifteen (15) calendar days after the end of each calendar quarter, each political party that meets the definition of political party stated in § 7-1-101 or that has met the petition requirements of § 7-7-205 shall file a quarterly report with the Secretary of State.

(b) The report shall include:

(1) The total amount of contributions received by the political party during the preceding calendar quarter;

(2) An itemization, including the name, address, employer, and occupation of each person who made a contribution or contributions to the political party which, in the aggregate, exceeded fifty dollars (\$50.00) in the preceding calendar quarter, as well as the amount received and date of receipt;

(3) The total amount of money disbursed by the political party during the preceding calendar quarter; and

(4) An itemization, including the amount of the disbursement, the name and address of the person to whom the disbursement was made, and the date the disbursement was made for each single disbursement that exceeded one hundred dollars (\$100).

**History.** Init. Meas. 1996, No. 1, § 11; Acts 2003, No. 1730, § 1; 2005, No. 1284, § 8; 2009, No. 473, § 7. **Amendments.** The 2009 amendment rewrote (a).

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Arkansas General Assembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.

### 7-6-224. Authority of local jurisdictions.

Municipalities, counties, and townships shall have the authority to establish reasonable limitations on:

(1) Time periods that candidates for local office shall be allowed to solicit contributions;

(2) Limits on contributions to local candidates at amounts lower than those set by state law; and

(3) Voluntary campaign expenditure limits for candidates seeking election to their respective governing bodies.

**History.** Init. Meas. 1996, No. 1, § 12.

### CASE NOTES

#### Validity of Statute.

Challenge to the constitutionality of this section is not ripe for consideration until a local jurisdiction has set a lower contribution level. *Russell v. Burris*, 978 F. Supp. 1211 (E.D. Ark. 1997), *aff'd* in part,

reversed in part, 146 F.3d 563 (8th Cir. 1998); *Arkansas Right to Life Political Action Comm. v. Butler*, 983 F. Supp. 1209 (W.D. Ark. 1997), *aff'd*, 146 F.3d 558 (8th Cir. 1998).

**7-6-225. Filing deadlines.**

Whenever a report becomes due on a day which is a Saturday, Sunday, or legal holiday, the report shall be due the next day which is not a Saturday, Sunday, or legal holiday.

**History.** Acts 1999, No. 553, § 23;  
2001, No. 1839, § 16.

**7-6-226. Registration and reporting by county political party committees.**

(a)(1)(A) To qualify as a county political party committee, the committee shall register with the Secretary of State within fifteen (15) days after accepting contributions during a calendar year that exceed five thousand dollars (\$5,000) in the aggregate.

(B) The registration shall be renewed annually by January 15, unless the committee has ceased to exist.

(C) Registration shall be on forms provided by the Secretary of State, and the contents of the form shall be verified by an affidavit of an officer of the committee.

(2)(A) The committee shall maintain for a period of four (4) years records evidencing the name, address, and place of employment of each person that contributed to the committee, along with the amount contributed.

(B) Furthermore, the committee shall maintain for a period of four (4) years records evidencing the name and address of each candidate who received a contribution from the committee, along with the amount contributed.

(3)(A) The committee shall appoint a treasurer who is a qualified elector of the State of Arkansas.

(B) No contribution shall be accepted from a committee and no expenditure shall be made by a committee that has not registered and which does not have a treasurer.

(4) No county political party committee shall accept a contribution from a prohibited political action committee as defined in § 7-6-201.

(b) The county political party committee shall disclose on the registration form the following information:

(1) The name, address, and, when available, phone number of the committee and the name, address, phone number, and place of employment of each of its officers. If the committee's name is an acronym, then both the acronym and the words forming the acronym shall be disclosed;

(2) The political party with which the county political party committee is affiliated;

(3) The full name and street address, city, state, and zip code of the financial institution in this state that the committee designates as its official depository for the purposes of depositing all money contributions that it receives in this state and making all expenditures in this state; and

(4) A written acceptance of appointment by the treasurer.

(c)(1) Within fifteen (15) calendar days after the end of each calendar quarter, county political party committees shall file a quarterly report with the Secretary of State, including the following information:

(A) The total amount of contributions received and the total amount of contributions made during the filing period and the cumulative amount of those totals;

(B) The current balance of committee funds;

(C) The name and address of each person who made a contribution or contributions to the committee that exceeded five hundred dollars (\$500) in the aggregate, the contributor's place of business, employer, or occupation, the date of the contribution, the amount contributed, and the total contributed for the year;

(D) The name and address of each candidate or committee, if any, to whom or which the committee made a contribution or contributions that exceeded fifty dollars (\$50.00) in the aggregate during the filing period, with the amount contributed and the election for which the contribution was made;

(E) The name and address of each candidate or committee, if any, to whom or which the committee contributed a nonmonetary item, together with a description of the item, the date the item was contributed, and the value of the item;

(F) The total amount of expenditures made for administrative expenses and for each single expenditure that exceeded one hundred dollars (\$100), an itemization including the amount of the expenditure, the name and address of the person to whom the expenditure was made, and the date the expenditure was made; and

(G) Any change in the information required by subsection (b) of this section.

(2) The reports shall be verified by an affidavit of an officer of the committee stating that to the best of his or her knowledge and belief the information disclosed is a complete, true, and accurate financial statement of the committee's contributions received and made.

(3)(A) A report is timely filed if it is either hand delivered or mailed to the Secretary of State, properly addressed, postage prepaid, bearing a postmark indicating receipt by the post office or common carrier on the date that the report is due.

(B) The Secretary of State shall accept via facsimile any report if the original is received by the Secretary of State within ten (10) days of the date of transmission.

(C) The Secretary of State may receive reports in a readable electronic format acceptable to the Secretary of State and approved by the Arkansas Ethics Commission.

**History.** Acts 2005, No. 2006, § 3; inserted (c)(1)(E) and redesignated the remaining subsections accordingly.

**Amendments.** The 2007 amendment The 2009 amendment inserted (a)(4).



**7-6-227. Registration by independent expenditure committee.**

(a)(1)(A) An independent expenditure committee shall register with the Secretary of State within fifteen (15) days after accepting contributions that exceed five hundred dollars (\$500) in the aggregate during a calendar year.

(B) Registration shall be annually renewed by January 15 unless the independent expenditure committee has ceased to exist.

(C) Registration shall be on a form provided by the Secretary of State, and the contents of the form shall be verified by an affidavit of an officer of the independent expenditure committee.

(2)(A) The independent expenditure committee shall maintain for a period of four (4) years records evidencing the name, address, and place of employment of each person that contributed to the independent expenditure committee, along with the amount contributed.

(B) The independent expenditure committee shall maintain for a period of four (4) years records evidencing each independent expenditure made by the committee, along with the amount of each expenditure.

(3)(A) The independent expenditure committee shall designate a resident agent who shall be an individual who resides in this state.

(B) A contribution shall not be accepted from an independent expenditure committee and an expenditure shall not be made by an independent expenditure committee that has not registered and does not have a resident agent.

(4) An out-of-state independent expenditure committee shall comply with the registration and reporting provisions of this section if the committee makes an independent expenditure or independent expenditures within the State of Arkansas that in the aggregate exceed more than five hundred dollars (\$500) during a calendar year.

(b) The registration form of an independent expenditure committee shall contain the following information:

(1)(A) The name, address, and, when available, phone number of the independent expenditure committee and the name, address, phone number, and place of employment of each of its officers.

(B) However, if the independent expenditure committee's name is an acronym, then both it and the words forming the acronym shall be disclosed;

(2) The full name and street address, city, state, and zip code of each financial institution the independent expenditure committee uses for purposes of receiving contributions or making expenditures within this state;

(3) A written acceptance of designation as a resident agent;

(4) A certification by an independent expenditure committee officer, under penalty of false swearing, that the information provided on the registration is correct; and

(5) A clause submitting the independent expenditure committee to the jurisdiction of the State of Arkansas for all purposes related to compliance with this subchapter.

(c)(1) When a committee makes a change to any information required in subsection (b) of this section, an amendment shall be filed within ten (10) days to reflect the change.

(2) A committee failing to file an amendment shall be subject to a late filing fee of ten dollars (\$10.00) for each day the change is not filed.

**History.** Acts 2009, No. 473, § 9; 2011, No. 721, § 12. substituted “independent expenditure committee” for “political action committee” in (a)(2)(A) and (a)(3)(A).  
**Amendments.** The 2011 amendment

CHAPTER 7  
NOMINATIONS AND PRIMARY ELECTIONS

- SUBCHAPTER.
- 1. METHODS OF NOMINATION.
  - 2. PRIMARY ELECTIONS GENERALLY.
  - 3. CONDUCT OF PRIMARY.
  - 4. CERTIFICATION OF NOMINATIONS.
  - 5. COUNTIES USING VOTING MACHINES. [REPEALED.]

RESEARCH REFERENCES

**Ark. L. Notes.** Cihak and Springman, HAVA and Arkansas Election Law Reform: Compliance and Promise, 2006 Arkansas L. Notes 1.

SUBCHAPTER 1 — METHODS OF NOMINATION

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| SECTION.   | SECTION.   |
| 7-7-101. Selection of nominees.  | 7-7-105. Filling vacancies in certain offices — Special primary elections.     |
| 7-7-102. Party nominees certified at primary election.                       | 7-7-106. Filling vacancies in candidacy for nomination — Preferential primary. |
| 7-7-103. Filing as an independent — Petitions — Disqualification.            |  |
| 7-7-104. Vacancy in nomination — Alternative methods for filling — Tie vote. |  |

**Publisher’s Notes.** Acts 1995, No. 901, § 17, repealed § 7-7-106, a code section number that at the time did not exist.

**A.C.R.C. Notes.** References to “this subchapter” in §§ 7-7-101 — 7-7-105 may not apply to § 7-7-106 which was enacted subsequently.

**Cross References.** Sufficiency of initiative and referendum petitions, §§ 7-9-111, 7-9-112.

**Effective Dates.** Acts 1972 (Ex. Sess.), No. 42, § 5: Feb. 18, 1972. Emergency clause provided: “Whereas the great majority of municipalities elect their municipal officials as independents and do not have political primaries for municipal office and whereas the great majority of municipal officials in small towns and cities receive no compensation or very nominal compensation and it would result in a real hardship to force candidates for municipal office in these small towns and cities to run in primaries and to file for municipal office seven (7) months before the general election and nine (9) months before the taking of office on January 1; and this act is immediately necessary to correct this situation. Therefore, an emer-

gency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take effect immediately on its passage and approval."

Acts 1977, No. 731, § 3: Mar. 24, 1977. Emergency clause provided: "It is hereby determined by the Seventy-First General Assembly that this act is necessary for the continued proper operation of the electoral process in the State of Arkansas, now therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1789, § 12: Emergency clause failed. Emergency clause provided: "It is found and determined by the General Assembly that Amendment 80 to the Arkansas Constitution becomes effective on July 1, 2001; that this implements the nonpartisan election of justices and judges as mandated by Amendment 80; and that to effectively implement Amendment 80, this act should become effective on July 1, 2001. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective on July 1, 2001."

Acts 2001, No. 1839, § 35: Became law without Governor's signature Apr. 20, 2001. Emergency clause provided: "It is found and determined by the General Assembly that various provisions of the Arkansas Code relating to campaign financing and ethics are vague or otherwise in need of modification; that this act accomplishes those purposes; and that this act

should go into effect as soon as possible so that those persons who are subject to the provisions of the various ethics and campaign finance statutes receive the benefit of the clarifications as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 1185, § 21: Oct. 2, 2011.

## RESEARCH REFERENCES

**Am. Jur.** 25 *Am. Jur.* 2d, Elections, § 128 et seq.

**C.J.S.** 29 *C.J.S.*, Elections, § 89 et seq.

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Constitutional Law, 1 *U. Ark. Little Rock L.J.* 140.

## CASE NOTES

### Constitutionality.

Strict access requirements imposed on qualifying procedures for a ballot position are not unconstitutionally burdensome if

they are necessary to further some compelling state interest. *Rock v. Byrant*, 459 F. Supp. 64 (E.D. Ark. 1978), *aff'd* without op., 590 F.2d 340 (8th Cir. Ark. 1978).



### 7-7-101. Selection of nominees.

The name of no person shall be printed on the ballot in any general or special election in this state as a candidate for election to any office unless the person shall have been certified as a nominee selected pursuant to this subchapter.

**History.** Acts 1969, No. 465, Art. 1, § 5; § 1; 1981, No. 960, § 1; A.S.A. 1947, § 3-1971, No. 261, § 3; 1972 (Ex. Sess.), No. 105.  
42, § 1; 1975, No. 700, § 1; 1977, No. 731,

### RESEARCH REFERENCES

**ALR.** Constitutionality of candidate participation provisions for primary elections. 121 A.L.R.5th 1.

### CASE NOTES

#### ANALYSIS

Construction.  
Vacancies.

#### Construction.

This section largely is a restatement of language found in Acts 1957, No. 205, § 1, the 1957 Compulsory Primary Act; § 7-7-102 also tracks that act's language. *Lewis v. West*, 318 Ark. 334, 885 S.W.2d 663 (1994).

#### Vacancies.

This title, through §§ 7-1-101(25), 7-7-102, and this section, requires political parties to hold primary elections (rather than conventions) except where a vacancy in nomination or vacancy in office exists. *Lewis v. West*, 318 Ark. 334, 885 S.W.2d 663 (1994).

### 7-7-102. Party nominees certified at primary election.

(a) Except as provided in subsection (b) of this section, nominees of any political party for United States Senate, United States House of Representatives, or state, district, county, township, or applicable municipal office to be voted upon at a general election shall be certified as having received a majority of the votes cast for the office, or as an unopposed candidate, at a primary election held by the political party in the manner provided by law.

(b) A new political party established by petition shall nominate any candidate by convention for the first general election after certification of a sufficient petition.

**History.** Acts 1969, No. 465, Art. 1, § 5; 1971, No. 261, § 3; 1972 (Ex. Sess.), No. 42, § 1; 1975, No. 700, § 1; A.S.A. 1947, § 3-105; Acts 2009, No. 959, § 34; 2011, No. 1036, § 1.

**Amendments.** The 2009 amendment

deleted (b); and inserted "township, or applicable municipal" and made related changes.

The 2011 amendment added (b); and added "Except as provided in subsection (b) of this section" in (a).

## RESEARCH REFERENCES

**ALR.** Constitutionality of candidate participation provisions for primary elections. 121 A.L.R.5th 1.

## CASE NOTES

## ANALYSIS

Constitutionality.  
Construction.  
Election Contest.  
Vacancies.

**Constitutionality.**

Requiring that political parties both conduct and pay for primary elections as a condition of access to the general election ballot is unconstitutional; the combined effect of § 7-7-102(a) and former § 7-3-101(4) impermissibly burdens the First and Fourteenth Amendment associational rights of voters. *Republican Party v. Faulkner County*, 49 F.3d 1289 (8th Cir. 1995).

**Construction.**

Section 7-7-101 largely is a restatement of language found in Acts 1957, No. 205, § 1, the 1957 Compulsory Primary Act; this section also tracks that act's lan-

guage. *Lewis v. West*, 318 Ark. 334, 885 S.W.2d 663 (1994).

**Election Contest.**

In election contest suit where unsuccessful candidate in preferential primary contested certification of vote and certification of nomination, his cause did not become moot even though contestee was elected alderman in general election. *Porter v. Hesselbein*, 235 Ark. 379, 360 S.W.2d 499 (1962) (decision under prior law).

**Vacancies.**

This title, through §§ 7-1-101(25), 7-7-101, and this section, requires political parties to hold primary elections (rather than conventions) except where a vacancy in nomination or vacancy in office exists. *Lewis v. West*, 318 Ark. 334, 885 S.W.2d 663 (1994).

**Cited:** *Smith v. Clinton*, 687 F. Supp. 1310 (E.D. Ark. 1988); *Tittle v. Woodruff*, 322 Ark. 153, 907 S.W.2d 734 (1995).

**7-7-103. Filing as an independent — Petitions — Disqualification.**

(a)(1) A person desiring to have his or her name placed upon the ballot as an independent candidate without political party affiliation for any United States office other than President of the United States or Vice President of the United States or state, county, township, or district office in any general election in this state shall file, during the party filing period for the year in which the election is to be held, a political practices pledge, an affidavit of eligibility, and a notice of candidacy stating the name and title the candidate proposes to appear on the ballot and identifying the elective office sought, including the position number, if any.

(2)(A) An independent candidate shall state the same position, including the position number, if any, on his or her petition.

(B) When a candidate has identified the position sought on the notice of candidacy, the candidate shall not be allowed to change the position but may withdraw a notice of candidacy and file a new notice of candidacy designating a different position before the deadline for filing.

(b)(1)(A) The person shall furnish by 12:00 noon on May 1 of the year in which the election is to be held petitions signed by not less than three percent (3%) of the qualified electors in the county, township, or district in which the person is seeking office, but in no event shall more than two thousand (2,000) signatures be required for a district, county, or township office.

(B) If the person is a candidate for state office or for United States Senator in which a statewide race is required, the person shall file petitions signed by not less than three percent (3%) of the qualified electors of the state or which contain ten thousand (10,000) signatures of qualified electors, whichever is the lesser.

(2) Each elector signing the petition shall be a registered voter, and the petition shall be directed to the official with whom the person is required by law to file the petition to qualify as a candidate and shall request that the name of the person be placed on the ballot for election to the office mentioned in the petition.

(3) Petitions shall be circulated not earlier than ninety (90) calendar days before the deadline for filing petitions to qualify as an independent candidate unless the number of days is reduced by a proclamation, ordinance, resolution, order, or other authorized document for a special election under § 7-11-101 et seq.

(4) In determining the number of qualified electors in any county, township, or district or in the state, the total number of votes cast therein for all candidates in the preceding general election for the office of Governor shall be conclusive of the number of qualified electors therein for the purposes of this section.

(5) If the number of days in which the petition for independent candidacy may be circulated is reduced by a proclamation, ordinance, resolution, order, or other authorized document for a special election under 7-11-101 et seq., the number of signatures required on the petition shall be reduced proportionately.

**History.** Acts 1969, No. 465, Art. 1, § 5; 1971, No. 261, § 3; 1972 (Ex. Sess.), No. 42, §§ 1, 2; 1975, No. 700, § 1; 1977, No. 731, § 1; 1981, No. 960, § 1; 1985, No. 1055, § 3; A.S.A. 1947, §§ 3-105, 3-105.1; Acts 1989, No. 591, §§ 1, 2; 1993, No. 512, § 7; 1997, No. 886, § 2; 1999, No. 77, § 1; 2001, No. 472, § 1; 2001, No. 1553, § 19; 2001, No. 1789, § 6; 2003, No. 1165, § 6; 2003, No. 1731, § 3; 2005, No. 67, § 16; 2007, No. 1020, § 13; 2007, No. 1049, § 21; 2009, No. 188, § 1; 2009, No. 1480, § 41.

**Amendments.** The 2007 amendment by No. 1020 inserted "12:00 noon on" in (b)(1)(A); and substituted "the petition" for "nomination certificates" in (b)(2).

The 2007 amendment by No. 1049, in (b), added "unless the number of days is

reduced by a proclamation, ordinance, resolution, or order of special election under § 7-5-103" in (3), and added (5); in (c)(2)(A), substituted "ninety (90)" for "eighty (80)" and "seventy (70)" for "sixty (60)"; and inserted "or she" in (e).

The 2009 amendment by No. 188 substituted "ninety (90)" for "sixty (60)" in (b)(3), and made a minor stylistic change.

The 2009 amendment by No. 1480 rewrote (a); substituted "order, or other authorized document for a special election under § 7-11-101 et seq." for "or order of special election under § 7-5-103" or variants in (b)(3) and (b)(5); and deleted (c) through (f).



## RESEARCH REFERENCES

**ALR.** Constitutionality of candidate participation provisions for primary elections. 121 A.L.R.5th 1.

**U. Ark. Little Rock L. Rev.** Ballot

Access. Restrictions in Representative Government: An Ode to the Wasted Vote, 26 U. Ark. Little Rock L. Rev. 703.

## CASE NOTES

## ANALYSIS

Constitutionality.

Construction.

Purpose.

Applicability.

Discrimination.

Power of Election Commissioners.

Signature Requirement.

Sufficiency of Petition.

Time of Filing.

**Constitutionality.**

Subsection (e) of this section, even if construed to apply to all petitions filed under the election laws rather than to those specifically mentioned in this section, would violate the constitutional provisions related to the jurisdiction of the Supreme Court under Ark. Const., Art. 7, §§ 4 and 11. *American Party v. Brandon*, 253 Ark. 123, 484 S.W.2d 881 (1972) (decision prior to 1993 amendment).

The deadline provision and former 15% requirement of this section, taken together, were overbroad, excessively restricted access of independents to the ballot and were unconstitutional as applied to independent candidates for state, district, county and township offices. *Lendall v. Bryant*, 387 F. Supp. 397 (E.D. Ark. 1975) (decision prior to 1975 amendment).

Former requirement in this section that a person seeking to run as an independent candidate for a state, county, township, or district office file a 15% petition was unconstitutional since reasonably diligent candidates could not be expected to satisfy such a requirement within the period allowed and since such a high percentage was not necessary to protect any compelling state interest. *Lendall v. Jernigan*, 424 F. Supp. 951 (E.D. Ark. 1977), *aff'd*, 433 U.S. 901, 97 S. Ct. 2963 (1977).

Deadline provisions in this section are constitutional in view of administrative necessity, the state's interest in excluding frivolous candidates and achieving a man-

ageable ballot and the fact that reasonably diligent candidates could be expected to satisfy the requirements with some regularity. *Rock v. Byrant*, 459 F. Supp. 64 (E.D. Ark. 1978), *aff'd* without op., 590 F.2d 340 (8th Cir. Ark. 1978).

State may reasonably require independent candidates seriously seeking statewide office to have concluded their qualifying procedures by the time of the preferential primary, at which the political parties' nominees may be selected. *Rock v. Byrant*, 459 F. Supp. 64 (E.D. Ark. 1978), *aff'd* without op., 590 F.2d 340 (8th Cir. Ark. 1978).

**Construction.**

The 1972 amendment to this section did little more than clarify the existing statutes as to the procedure to be followed in qualifying as an independent candidate for municipal offices at general elections. *Stillinger v. Rector*, 253 Ark. 982, 490 S.W.2d 109 (1973).

The provisions of elections laws are mandatory if enforcement is sought before the election and directory if not raised until after the election. *Donn v. McCuen*, 303 Ark. 415, 797 S.W.2d 455 (1990).

**Purpose.**

The statutory requirements for qualifying as candidates are designed so that other pertinent election procedures can be timely met. *Donn v. McCuen*, 303 Ark. 415, 797 S.W.2d 455 (1990).

**Applicability.**

A municipal corporation court judge vacancy filled by a countywide election is a municipal office, so subsection (d) [now subsection (c)] of this section applies. *Oliver v. Simons*, 318 Ark. 402, 885 S.W.2d 859 (1994).

The appropriate procedure and deadline for filing as an independent candidate for the office of municipal judge is governed by subdivision (d)(2) [now subdivision (c)(2)] of this section. *Oliver v. Si-*

mons, 318 Ark. 402, 885 S.W.2d 859 (1994).

### **Discrimination.**

The court could not find that one who paid his filing fee as an independent candidate for justice of the peace to the wrong treasurer, but otherwise fully complied with the requirements of this subchapter, was denied a place on the ballot because of racial discrimination without evidence that other candidates paying their fees in the wrong place had been placed on the ballot. *Bynum v. Burns*, 379 F.2d 229 (8th Cir. 1967) (decision under prior law).

### **Power of Election Commissioners.**

The election commissioners have power to determine whether a prima facie showing of a sufficient petition has been made, but they have no other function. *Carroll v. Schneider*, 211 Ark. 538, 201 S.W.2d 221 (1947) (decision under prior law).

Where a petition bearing a sufficient number of signers was filed, the election commissioners were without authority to refuse to place the name of a candidate on the ballot because some of the signers of the petition were not properly assessed for their full taxes. *Carroll v. Schneider*, 211 Ark. 538, 201 S.W.2d 221 (1947) (decision under prior law).

### **Signature Requirement.**

If 10,000 signatures are sufficient to demonstrate a modicum of support for an independent candidate under subdivision (c)(2) of this section, then 10,000 signatures are also sufficient to demonstrate a modicum of support for a new political party under § 7-1-101(16) [now (17)]. *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

### **Sufficiency of Petition.**

The board of election commissioners has the right to determine the prima facie sufficiency of a petition to have the name of an independent candidate for county office placed on the ballot by counting the number of signers and comparing the total with the number required by law and the county clerk cannot by mandamus compel the board to turn the petition over to him so he can compare the petition with voter registration list to determine their adequacy. *Swiderski v. Goggins*, 257 Ark. 164, 514 S.W.2d 705 (1974).

Under this section challenges to the sufficiency of an independent candidate's petition are treated the same as challenges to initiative and referendum petitions. *Donn v. McCuen*, 303 Ark. 415, 797 S.W.2d 455 (1990).

### **Time of Filing.**

The filing of political practice pledges and nominating petitions not less than 45 days (now 60) before the general election was a requirement to be performed in order to become an independent candidate for municipal office. *Stillinger v. Rector*, 253 Ark. 982, 490 S.W.2d 109 (1973).

Where candidate filed a petition for qualification as an independent candidate for the Arkansas House of Representatives, was notified that his petition was not certified in a letter from the Elections Division of the Secretary of State dated May 2, 2006, but the candidate did not file his verified complaint against the Arkansas Secretary of State until May 31, 2006, which was nine days late, the circuit court did not have subject matter jurisdiction to hear the complaint. *Daniels v. Weaver*, 367 Ark. 327, 240 S.W.3d 95 (2006).

**Cited:** *Republican Party v. Faulkner County*, 49 F.3d 1289 (8th Cir. 1995).

## **7-7-104. Vacancy in nomination — Alternative methods for filling — Tie vote.**

(a) Except as provided in subdivision (b) of this section, nominees of a political party to fill a vacancy in nomination, as defined in § 7-1-101, shall be declared by:

(1) Certificate of the chair and secretary of any convention of delegates held within twenty-five (25) days of the Governor's letter certifying vacancy; or

(2)(A) A special primary election called, held, and conducted in accordance with the rules of the party.

(B) A special primary election may be called only if the special primary election can be called, held, conducted, and certified and certificates of nomination filed at least seventy (70) days before the general election.

(b)(1) In case of a tie vote for the same office at a general primary election, a vacancy in nomination for that office shall exist.

(2)(A) Nominees of a political party to fill a vacancy in nomination resulting from a tie vote for the same office at a general primary election shall be declared by certificate of the chair and secretary of an appropriate convention of delegates held within twenty-five (25) days of the Governor's letter certifying a vacancy.

(B) A convention of delegates shall be conducted in accordance with the rules of the party.

(c)(1) When a vacancy in nomination occurs as a result of death or when the person who received the majority of votes cast at the preferential primary election or the general primary election notifies the state committee of the political party of his or her intent to refuse nomination due to serious illness, moving out of the area from which elected as the party's nominee, or filing for another office, the state committee of the political party shall notify the Governor within five (5) days after the date of death or the date the party was notified of intent to refuse nomination as to whether the party chooses to fill the vacancy in nomination at a special election or a convention.

(2) If the party fails to notify the Governor within the five-day period, the vacancy in nomination shall not be filled nor shall the vacancy in nomination be filled if it occurred for any reason other than death, serious illness, the candidate's moving out of the area from which elected as the party's nominee, or filing for another office.

(d)(1) If the party notifies the Governor within the time prescribed in subsection (c) of this section of the desire to have a special primary election, the Governor shall issue a proclamation within five (5) days calling the special election and establishing the deadline for filing as a candidate for nomination, drawing for ballot position, and issuing and filing certificates of nomination. The special primary election shall occur no earlier than thirty (30) days nor later than sixty (60) days after the filing deadline. The candidate who receives the most votes in the special primary election shall be declared the nominee. There shall be no runoff election. In the event of a tie for the most votes, the nominee shall be determined by lot in a public meeting of the appropriate party committee.

(2) When the certificate of nomination is filed for a nominee who is filling a vacancy in nomination, the filing authority shall immediately certify the name of the nominee to the appropriate county board of election commissioners.

(e)(1) If the party notifies the Governor that it desires to fill the vacancy in nomination by convention, the convention shall occur no later than twenty-five (25) days after the notice is provided to the Governor.



(2) A convention shall be conducted in accordance with the rules of the party.

(f)(1) If the party's nominee is not selected in time to file his or her certificate of nomination with the appropriate party authority at least seventy-six (76) days before the general election, the nominee's name shall not appear on the general election ballot but the name of the person who vacated the nomination shall appear on the ballot, and votes cast for the name of the person appearing on the ballot shall be counted for the nominee but only if the certificate of nomination is duly filed at least forty-seven (47) days before the general election.

(2)(A) If votes for a nominee whose name does not appear on the ballot are to be counted under subdivision (f)(1) of this section, the county board of election commissioners shall post a notice at each affected polling place stating each election in which a vote for the person appearing on the ballot shall be counted for the nominee.

(B) A copy of the notice shall be included with the instructions sent to absentee voters.

**History.** Acts 1969, No. 465, Art. 1, §§ 5, 10; 1971, No. 261, §§ 3, 4; 1972 (Ex. Sess.), No. 42, § 1; 1975, No. 700, § 1; A.S.A. 1947, §§ 3-105, 3-110; Acts 1997, No. 1082, § 3; 2005, No. 2145, § 12; 2007, No. 1049, § 22; 2011, No. 203, § 2; 2011, No. 1185, § 8.

**Amendments.** The 2007 amendment inserted (a)(2)(B); rewrote (e); added (g); and made related changes.

The 2011 amendment by No. 203 added the exception in (a); redesignated former (b) as present (b)(1); added (b)(2); redesign-

ated former (c) as present (c)(1); redesignated former (d) as present (c)(2); redesignated former (e) as present (d); redesignated former (f) as present (e)(1), and added (e)(2) and redesignated the remaining subsection accordingly; and substituted "(f)(1)" for "(g)(1)" in (f)(2)(A).

The 2011 amendment by No. 1185, substituted "seventy-six (76)" for "sixty-six (66)" and "forty-seven (47)" for "thirty-five (35)" in current (f)(1).

**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.

## CASE NOTES

### Withdrawal of Candidate.

Withdrawal from race of candidate who received second largest number of votes at preferential primary did not give third highest candidate right to have his name placed on ballot for general primary. *Higgins v. Barnhill*, 218 Ark. 466, 236 S.W.2d

1011 (1951), overruled in part, *Nethercutt v. Pulaski County Special School Dist.*, 248 Ark. 143, 450 S.W.2d 777 (Ark. 1970) (decision under prior law).

**Cited:** *Republican Party v. Faulkner County*, 49 F.3d 1289 (8th Cir. 1995).

## 7-7-105. Filling vacancies in certain offices — Special primary elections.

(a) Nominees for special elections called for the purpose of filling a vacancy in office for a member of the United States House of Representatives, Lieutenant Governor, or for a member of the Senate or House of Representatives of the General Assembly shall be chosen as follows:

(1) The Governor shall certify in writing to the state committees of the respective political parties the fact of vacancy and shall request the respective state committees to make a determination and notify him or

her in writing within ten (10) days with respect to whether the political parties desire to hold a special primary election or a convention of delegates held under party rules to choose nominees;

(2)(A) If the state committee of any political party timely notifies the Governor that it chooses to hold a special primary election, any political party desiring to choose a nominee shall choose the nominee at a special primary election.

(B) The Governor's proclamation shall set dates for the special primary election and the runoff primary election to be held if no candidate receives a majority of the vote at the special primary election; and

(3)(A) A special election to fill the vacancy in office shall be held on a date as soon as possible after the vacancy occurs, but not more than one hundred fifty (150) days after the occurrence of the vacancy.

(B) The special election shall be held in accordance with laws governing special elections.

(C)(i) If a nominee is to be chosen at a special primary election and if, after the close of the filing period, only one (1) or two (2) candidates have filed for the nomination of a party holding a primary, the state committee of a party holding a primary shall notify the Governor.

(ii) The Governor shall issue a new proclamation setting the special election for an earlier date so long as the earlier date is in accordance with state laws governing special elections.

(b) If no state committee of any political party timely notifies the Governor of the desire to hold a special primary election or convention, the Governor, in issuing his or her proclamation calling for the special election, shall declare that the nominee of a political party shall be chosen at a convention.

**History.** Acts 1969, No. 465, Art. 1, § 5; 1971, No. 261, § 3; 1972 (Ex. Sess.), No. 42, § 1; 1975, No. 700, § 1; A.S.A. 1947, § 3-105; Acts 1987, No. 248, § 1; 1993, No. 512, § 8; 1997, No. 1082, § 2; 2005, No. 2145, § 13; 2007, No. 1049, § 23; 2009, No. 1480, § 42.

**Amendments.** The 2007 amendment rewrote the section.

The 2009 amendment rewrote the section.

## CASE NOTES

### ANALYSIS

Construction.  
Vacancies.

#### Construction.

This section does not conflict with Ark. Const., Art. 6, § 14, Ark. Const. Amend. 6, § 2, or Ark. Const. Amend. 6, § 5. *Stratton v. Priest*, 326 Ark. 469, 932 S.W.2d 321 (1996).

### Vacancies.

The central committee could make nominations and certify the nominations only when there was a vacancy caused by death, withdrawal or other things mentioned in former section. *Winn v. Wooten*, 196 Ark. 737, 119 S.W.2d 540 (1938) (decision under prior law).

**7-7-106. Filling vacancies in candidacy for nomination — Preferential primary.**

- (a) A political party may fill a vacancy if:
- (1) A person is running unopposed in a preferential primary and cannot accept the nomination due to death; or
- (2) Upon notification to the party that he or she will not accept the nomination due to a serious illness.
- (b) The vacancy shall be filled within ten (10) calendar days after the death or notification to the political party.
- (c) The vacancy shall be filled at a convention of the political party.
- (d) If the vacancy is filled more than sixty-six (66) days before the preferential primary election, the name of the person filling the vacancy shall be printed on the ballot instead of the name of the person who vacated the candidacy.
- (e) If the vacancy is filled less than sixty-six (66) days before the date of the preferential primary, the name of the person subsequently elected to fill the vacancy in candidacy shall be declared the nominee even if the name of the person who vacated the candidacy appears on the preferential primary ballot.
- (f) If the vacancy in candidacy is not filled before the date of the preferential primary election, a vacancy in nomination shall be deemed to exist on the date of the preferential primary election and the vacancy in nomination shall be filled under § 7-7-104.

**History.** Acts 2001, No. 1772, § 1; substituted “candidacy for nomination”  
2007, No. 1049, § 24. for “certain offices” in the section heading;  
**Amendments.** The 2007 amendment and added (d) through (f).

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of assembly, Election Law, 24 U. Ark. Little  
Legislation, 2001 Arkansas General As- Rock L. Rev. 465.

**SUBCHAPTER 2 — PRIMARY ELECTIONS GENERALLY**

SECTION.	SECTION.
7-7-201. Law governing primary elec- tions.	7-7-203. Dates.
7-7-202. Preferential and general prima- ries — When required — Common polling places.	7-7-204. Candidacy for multiple nomina- tions prohibited.
	7-7-205. Petition requirements for new political parties.

**Effective Dates.** Acts 1971, No. 347, § 13: Mar. 22, 1971. Emergency clause provided: “The General Assembly finds that the people of Arkansas have an im-  
mediate need for a greater sense of participation in the political process at all levels. Accordingly, an emergency is de-  
clared to exist and this act, being neces-  
sary for the preservation of the public interest, health, safety, and welfare, shall be effective from and after the date of its passage and approval.”  
Acts 1972 (Ex. Sess.), No. 37, § 6: Feb. 16, 1972. Emergency clause provided:



"The General Assembly finds that the dates of the 1972 national nominating conventions and primary elections are fast approaching, that the people of the state are in immediate need of a resolution of uncertainties that have arisen with respect to the selection of delegates and alternates thereto, and that the effective administration of the election laws of this state requires that the dates of the primary elections now fixed by law be advanced. Accordingly, an emergency is declared to exist, and this act, being necessary for the preservation of the public health, interest, safety, and welfare, shall be effective immediately upon its passage and approval."

Acts 1995, No. 901, § 21: Apr. 4, 1995. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the state should provide for a state supported political primary system; and that this act should become effective immediately for the proper administration of this act. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2011, No. 1185, § 21: Oct. 2, 2011.

### RESEARCH REFERENCES

**Am. Jur.** 25 Am. Jur. 2d, Elections, § 147 et seq.

**C.J.S.** 29 C.J.S., Elections, § 111(1) et seq.

### CASE NOTES

#### **New Political Party.**

Arkansas law provides two means of forming a new political party: the convention process, which permits a political group to hold a convention to choose presidential candidates; or the petition process,

which permits a political group to declare its intent to organize a political party. *Citizens to Establish a Reform Party v. Priest*, 325 Ark. 257, 926 S.W.2d 432 (1996).

### **7-7-201. Law governing primary elections.**

(a) The cost of political party primaries shall be borne by the State of Arkansas and shall be paid from an appropriation made to the State Board of Election Commissioners for that purpose.

(b)(1) Within each county, the political party primary elections shall be conducted by the county board of election commissioners.

(2) The state board shall have authority to adopt rules for the administration of primary elections consistent with the provisions of this chapter.

(3) The state board may withhold reimbursement of funds to the counties for state-funded elections for failure to comply with the rules developed by the state board for the administration of primary elections or applicable state election laws until all requirements are met to the satisfaction of the state board.

(4) Each political party shall be responsible for determining the qualifications of candidates seeking nomination by the political party, provide necessary applications for candidacy, accept and process the applications, and determine the order of its ballot.

(c) All political party primary elections shall be conducted in conformity with the provisions of this act, and these elections are declared to be legal elections.

(d) In cases of circumstances or procedures which may arise in connection with any primary election for which there is no provision of this act governing the circumstances or procedures, they shall be governed by the general election laws of this state or by party rules if there is no applicable general election law.

**History.** Acts 1969, No. 465, Art. 1, § 7; A.S.A. 1947, § 3-107; Acts 1995, No. 901, § 2; 2001, No. 1175, § 1; 2007, No. 987, § 2.

**Amendments.** The 2007 amendment deleted former (b)(1) and redesignated the remaining subsections accordingly; and deleted “under the direction of the state board” following “commissioners” in present (b)(1).

**Meaning of “this act”.** Acts 1969, No. 465, codified as §§ 7-1-101, 7-1-103 — 7-1-105, 7-3-101 — 7-3-108, 7-4-101 — 7-4-105, 7-4-107 — 7-4-112, 7-5-101, 7-5-102, 7-5-103 [repealed], 7-5-202 — 7-5-209, 7-5-210 [repealed], 7-5-211, 7-5-301, 7-5-302 [repealed], 7-5-303 [repealed],

7-5-304 — 7-5-306, 7-5-307 [repealed], 7-5-308, 7-5-309, 7-5-312 [repealed], 7-5-313 [repealed], 7-5-314 — 7-5-319, 7-5-401 — 7-5-403, 7-5-405 — 7-5-417, 7-5-501 [repealed], 7-5-502 — 7-5-504, 7-5-505 [repealed], 7-5-506 [repealed], 7-5-507, 7-5-508 [repealed], 7-5-509, 7-5-511 [repealed], 7-5-512, 7-5-513, 7-5-514 [repealed], 7-5-515 — 7-5-518, 7-5-519 [repealed], 7-5-520 — 7-5-522, 7-5-524 — 7-5-531, 7-5-701 — 7-5-706, 7-5-801 — 7-5-809, 7-6-101 — 7-6-105, 7-7-101 — 7-7-105, 7-7-201 — 7-7-203, 7-7-301 — 7-7-307, 7-7-309, 7-7-310 [repealed], 7-7-401, 7-7-402, 7-7-403 [repealed], 7-8-101 — 7-8-104, 7-8-301, 7-8-302, 7-8-304 — 7-8-307, 25-16-801.

## RESEARCH REFERENCES

**ALR.** Effect of irregularities or defects in primary petitions-State cases. 14 A.L.R.6th 543.

## CASE NOTES

### ANALYSIS

General Election Laws.  
Qualification of Candidate.

### General Election Laws.

In the absence of a declaration to that effect, the general election laws have no application to legalized primary elections. *State v. Simmons*, 117 Ark. 159, 174 S.W. 238 (1915) (decision under prior law).

### Qualification of Candidate.

Where a candidate brought a suit against a political party because his name

was struck from the ballot after he had been certified by the party, the trial court erred in relying on subdivision (b)(5) [now subdivision (b)(4)] of this section to dismiss the case; the candidate's recourse, pre-election and after certification as completing the steps to file as a candidate by the Democratic Party, was to file suit for declaratory judgment and mandamus on his eligibility. *Hill v. Carter*, 357 Ark. 597, 184 S.W.3d 431 (2004).

**Cited:** *Williams v. State*, 254 Ark. 799, 496 S.W.2d 395 (1973); *Republican Party v. Faulkner County*, 49 F.3d 1289 (8th Cir. 1995).

**7-7-202. Preferential and general primaries — When required — Common polling places.**

(a) Whenever any political party shall select by primary election party nominees as candidates at any general election for any United States, state, district, county, township, or municipal office, there shall be held a preferential primary election and a general primary election, if required, on the respective dates provided in § 7-7-203(a) and (b).

(b) A general primary election for a political party shall not be held if there are no races in which three (3) or more candidates qualify for the same office or position as provided in subsection (c) of this section unless a general primary election is necessary to break a tie vote for the same office or position at the preferential primary.

(c) If there are no races in which three (3) or more candidates qualify for the same office or position, only the preferential primary election shall be held for the political party. If all nominations have been determined at the preferential primary election or by withdrawal of candidates as provided in § 7-7-304(a) and (b), the general primary election shall not be held.

(d) The county board of election commissioners shall establish common polling places for the joint conduct of the primary elections of all political parties.

**History.** Acts 1969, No. 465, Art. 1, §§ 8, 10; 1971, No. 261, § 4; A.S.A. 1947, §§ 3-108, 3-110; Acts 1995, No. 901, § 3; 2005, No. 67, § 17; 2009, No. 959, § 35.

**Amendments.** The 2009 amendment inserted “if required” in (a), and made related changes.

## RESEARCH REFERENCES

**ALR.** Effect of irregularities or defects in primary petitions-State cases. 14 A.L.R.6th 543.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Right to Contest.  
Withdrawal of Candidate.

### Constitutionality.

Neither Ark. Const. Amend. 29, § 5, nor this section, which establish and implement the majority vote primary run-off requirement, violate the Fourteenth or Fifteenth Amendments of the United States Constitution or the federal Voting Rights Act. *Whitfield v. Democratic Party*, 686 F. Supp. 1365 (E.D. Ark. 1988), *aff'd in part, reversed in part*, 890 F.2d 1423 (8th Cir. Ark. 1989).

There is no substantial reason to believe

that the majority-vote requirement in this state was originally enacted to prevent black political success. *Jeffers v. Clinton*, 740 F. Supp. 585 (E.D. Ark. 1990), appeal dismissed, 498 U.S. 1129, 111 S. Ct. 1096 (1991).

Section 5 of Amendment 29 and its implementing statutes were not enacted nor maintained for racially invidious purposes. *Jeffers v. Clinton*, 740 F. Supp. 585 (E.D. Ark. 1990), appeal dismissed, 498 U.S. 1129, 111 S. Ct. 1096 (1991).

### Right to Contest.

As a matter of public policy, former similar section gave a candidate in a preferential primary the right to contest that election upon the proper allegations of



entitlement to be certified as a candidate in the run-off or general primary election. *Porter v. Hesselbein*, 235 Ark. 379, 360 S.W.2d 499 (1962) (decision under prior law).

#### **Withdrawal of Candidate.**

Withdrawal from race of candidate who received second largest number of votes at preferential primary did not give third highest candidate right to have his name

placed on ballot for general primary. *Higgins v. Barnhill*, 218 Ark. 466, 236 S.W.2d 1011 (1951), overruled in part, *Nethercutt v. Pulaski County Special School Dist.*, 248 Ark. 143, 450 S.W.2d 777 (Ark. 1970) (decision under prior law).

**Cited:** *Republican Party v. Faulkner County*, 49 F.3d 1289 (8th Cir. 1995); *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

### **7-7-203. Dates.**

(a) The general primary election shall be held on the second Tuesday in June preceding the general election.

(b) The preferential primary election shall be held on the Tuesday three (3) weeks before the general primary election.

(c)(1) The party filing period shall be a one-week period ending at 12:00 noon on the first day in March and beginning at 12:00 noon one (1) week prior to the first day in March.

(2) Party pledges, if any, and affidavits of eligibility shall be filed, any filing fees of a political party, if any, shall be paid, and party certificates shall be issued by the party during regular office hours during the party filing period.

(3) A party certificate and the political practices pledge shall be filed with the county clerk or the Secretary of State, as the case may be, during regular office hours during the party filing period.

(4) The name of a candidate who fails to file a party certificate and political practices pledge by the filing deadline with the Secretary of State or county clerk, as the case may be, shall not appear on the ballot.

(5) Party pledges, if any, shall be filed, filing fees, if any, shall be paid, and party certificates and political practice pledges shall be filed for special primary elections on or before the deadline established by proclamation of the Governor or other entity authorized to call a special primary election.

(d)(1) At least seventy-five (75) days before the preferential primary election, the Secretary of State shall certify to the various county committees and to the various county boards of election commissioners a list of the names of all candidates who have filed party certificates with the Secretary of State within the time required by law.

(2) At least seventy-five (75) days before the preferential primary election, the county clerk shall certify to the county committees and to the county board of election commissioners a list of the names of all candidates who have filed party certificates with the county clerk within the time required by law.

(e)(1) The county board of election commissioners shall convene, at the time specified in the notice to the members given by the chair of the board, no later than the tenth day after each primary election for the purpose of canvassing the returns and certifying the election results.

(2) If no time is specified for the meeting of the county board of election commissioners, the meeting shall be at 5:00 p.m.

(f) The county convention of a political party holding a primary election shall be held on the first Monday following the date of the general primary election.

(g)(1) The county board of election commissioners shall certify to the county clerk and the county committee a list of all nominated candidates for county, township, and municipal offices, and the political parties' county committee members and delegates.

(2) At the same time, the county board of election commissioners shall certify to the Secretary of State and the secretary of the state committee the results of the contests for all United States, state, and district offices. Immediately after ascertaining the results for all United States, state, and district offices, the Secretary of State shall certify to the state committee a list of all nominated candidates for the offices.

(h)(1)(A) The Secretary of State shall at least one hundred (100) days before the date of the general election notify by registered mail the chair and secretary of the state committee of the respective political parties that a certificate of nomination is due for all nominated candidates for United States, state, and district offices in order that the candidates' names be placed on the ballot of the general election.

(B)(i) The state committee shall issue certificates of nomination to all nominated candidates for United States, state, and district offices, who shall file the certificates with the Secretary of State at least ninety (90) days before the general election.

(ii) However, if the chair and secretary of the state committee of the respective political parties are not properly notified as directed by subdivision (h)(1)(A) of this section, the failure of a candidate to file a certificate of nomination by the deadline shall not prevent that candidate's name from being placed on the ballot of the general election.

(2)(A) Each county clerk shall at least one hundred (100) days before the date of the general election notify by registered mail the chairs and secretaries of the county committees of the respective political parties that a certified list of all nominated candidates for county, township, and municipal offices is due and shall be filed with the county clerk in order that the candidates' names be placed on the ballot for the general election.

(B)(i) Each county committee shall issue the certified list on behalf of those nominated candidates and submit the certified list to the county clerk at least ninety (90) days before the general election.

(ii) However, if the chairs and secretaries of the county committees of the respective political parties are not properly notified as directed by subdivision (h)(2)(A) of this section, the failure of a certified list to be filed by the deadline shall not prevent any candidate's name from being placed on the ballot of the general election.



**History.** Acts 1969, No. 465, Art. 1, § 13; 1971, No. 261, § 23; 1971, No. 347, §§ 5-7; 1971, No. 829, §§ 1-3; 1972 (Ex. Sess.), No. 37, §§ 1, 2; 1975, No. 601, §§ 1, 2; 1977, No. 888, §§ 1, 2; 1981, No. 448, § 1; A.S.A. 1947, § 3-113; Acts 1987, No. 123, §§ 13, 14; 1987, No. 248, §§ 2, 16; 1993, No. 966, § 2; 1995, No. 723, § 2; 1995, No. 724, § 2; 1995, No. 901, § 4; 1997, No. 886, § 3; 2001, No. 1475, § 3; 2003, No. 1165, § 7; 2003, No. 1731, § 4; 2007, No. 1020, § 14; 2007, No. 1049, § 25; 2009, No. 959, § 36; 2011, No. 1185, § 9.

**Amendments.** The 2007 amendment by No. 1020 deleted former (b)(5); deleted former (e) and redesignated the remaining subsections accordingly; substituted "(i)(1)(A)" for "(j)(1)(A)" in (i)(1)(B)(ii); and substituted "(i)(1)(A)" for "(j)(2)(A)" in (i)(2)(B)(ii).

The 2007 amendment by No. 1049, in (c), substituted "first weekday" for "third Tuesday" and "seventh" for "fourteenth" in (1) and (2), and deleted former (5); in (d), substituted "At least seventy (70)" for "No later than forty (40)" and "Secretary of State" for "chairman and secretary of the state committee of the political party";

deleted former (f), and redesignated the following subdivisions accordingly; in present (i), substituted "one hundred (100)" for "seventy (70)" in (1)(A), "ninety (90)" for "sixty (60)" in (1)(B)(i) and (2)(A), "(i)(1)(A)" for "(j)(1)(A)" in (1)(B)(ii), "eighty (80)" for "forty-five (45) days but not more than fifty-five (55)" in (2)(B)(i), and "(i)(2)(A)" for "(j)(2)(A)" in (2)(B)(ii).

The 2009 amendment inserted (d)(2); in (d)(1), deleted "the ballot" following "shall certify" and substituted "filed party certificates with the Secretary of State" for "qualified with the state committee for election by filing the party pledge and paying the filing fees of the political party"; inserted "by the deadline" in (h)(1)(B)(ii) and (h)(2)(B)(ii); deleted "the county board of election commissioners and" preceding "the county clerk" in (h)(2)(A) and (h)(2)(B)(i); and made minor stylistic changes.

The 2011 amendment rewrote (c); substituted "seventy-five (75)" for "seventy (70)" in (d)(1) and (d)(2); substituted "one hundred (100)" for "ninety (90)" in (h)(2)(A); and substituted "ninety (90)" for "eighty (80)" in (h)(2)(B)(i).

**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Constitutional Law, 1 U. Ark. Little Rock L.J. 140.

Survey of Legislation, 2001 Arkansas General Assembly, Election Law, 24 U. Ark. Little Rock L. Rev. 465.

## CASE NOTES

### ANALYSIS

Constitutionality.

Ballot Fee.

Certification of Nomination.

Filing Deadline.

Independent Candidates.

Legislative Intent.

Party Pledges.

Political Practices Pledge.

### Constitutionality.

Deadlines for filing petitions to establish political parties previously set forth in this section and § 7-1-101(16) [now (17)] were unconstitutional as the petition provisions were too vague and indefinite to be enforced and to judicially supply the needed definiteness would have improv-

erly involved the court in exercising legislative prerogatives. *American Party v. Jernigan*, 424 F. Supp. 943 (E.D. Ark. 1977) (decision prior to 1981 amendment).

This section is void for vagueness and violates the First and Fourteenth Amendments. *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

The conflict between the deadline provisions in former § 7-1-101(16)(B) and subsection (g) [now subsection (h)] of this section render both statutes unconstitutionally vague. *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

The combined effect of the early deadline of subsection (g) [now subsection (h)] of this section in conjunction with the 3%



requirement of former § 7-1-101(16)(A) places an unreasonable burden of federally protected constitutional rights. *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

The individual statutory provisions set forth in subsection (g) [now subsection (h)] of this section and former § 7-1-101(16)(A), as well as the combined effect of the statutes, place unreasonable burdens on plaintiffs seeking to establish a new political party, and those burdens are sufficiently severe to violate plaintiffs' rights under First Amendment guarantees of freedom of speech and freedom of association and Fourteenth Amendment guarantee of equal protection and the right to due process. *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

#### **Ballot Fee.**

Candidate who sent in his check for ballot fee on last permissible day but whose check did not clear the bank when presented some days later did not pay ballot fee within designated period, though candidate tendered the cash for check as soon as he was informed that check had not cleared. *Fletcher v. Ray*, 220 Ark. 844, 250 S.W.2d 734 (1952) (decision under prior law).

#### **Certification of Nomination.**

Subsection (l) [now subsection (g)] of this section serves the administrative purpose of verifying for the Secretary of State's office, after the primaries have been held, the names of the parties' respective nominees who will be candidates in the general election. *Rock v. Byrant*, 459 F. Supp. 64 (E.D. Ark. 1978), *aff'd* without op., 590 F.2d 340 (8th Cir. Ark. 1978).

#### **Filing Deadline.**

Under former § 7-1-101(16)(B), the effective filing deadline in 1996 was May 7, while under subsection (g) [now subsection (h)] of this section, the effective filing deadline for 1996 was January 2; the January 2 deadline of subsection (g) [now subsection (h)] was controlling. *Citizens to Establish a Reform Party v. Priest*, 325 Ark. 257, 926 S.W.2d 432 (1996).

Contrary to a candidate's argument, the trial court did not err in its interpretation of this section; further, the candidate conceded that she did not meet the statutorily

mandated noon filing deadline and that the filing of her party certificate and political practices pledge for her candidacy was untimely. *Republican Party v. Johnson*, 358 Ark. 443, 193 S.W.3d 248 (2004).

#### **Independent Candidates.**

State may reasonably require independent candidates seriously seeking statewide office to have concluded their qualifying procedures by the time of the preferential primary, at which the political parties' nominees may be selected. *Rock v. Byrant*, 459 F. Supp. 64 (E.D. Ark. 1978), *aff'd* without op., 590 F.2d 340 (8th Cir. Ark. 1978).

Subsection (g) [now subsection (h)] of this section did not preclude a write-in for the office of United States senator for this state from exercising his right to run for public office, nor did it deprive the voters of their right to cast a ballot for him in the general election; therefore, the candidate was not entitled to have the ballots reprinted to include his name. *Christian Populist Party v. Secretary of State*, 650 F. Supp. 1205 (E.D. Ark. 1986).

#### **Legislative Intent.**

Unlike in former § 7-1-101(16)(B), the legislature did not intend to exempt presidential primaries from subsection (g) [now subsection (h)] of this section. *Citizens to Establish a Reform Party v. Priest*, 325 Ark. 257, 926 S.W.2d 432 (1996).

#### **Party Pledges.**

This section and § 7-7-301 leave it up to the political party to determine whether or not a party loyalty oath is required. *Baker v. Jacobs*, 303 Ark. 460, 798 S.W.2d 63 (1990).

#### **Political Practices Pledge.**

Failure to timely file a political practices pledge with the Secretary of State as required by § 7-6-102(e)(2)(B) is reason enough to prevent a candidate's name from appearing on the ballot. *Lewis v. West*, 318 Ark. 334, 885 S.W.2d 663 (1994).

**Cited:** *Williams v. Pulaski County Election Comm'n*, 249 Ark. 309, 459 S.W.2d 52 (1970); *Stillinger v. Rector*, 253 Ark. 982, 490 S.W.2d 109 (1973); *Lendall v. Bryant*, 387 F. Supp. 397 (E.D. Ark. 1975); *Lendall v. Jernigan*, 424 F. Supp. 951 (E.D. Ark. 1977); *Doulin v. White*, 528 F. Supp. 1323 (E.D. Ark. 1982); *Jeffers v.*

Clinton, 730 F. Supp. 196 (E.D. Ark. 1989); Jeffers v. Clinton, 756 F. Supp. 1195 (E.D. Ark. 1990); Ivy v. Republican Party, 318 Ark. 50, 883 S.W.2d 805 (1994); Republican Party v. Faulkner County, 49 F.3d

1289 (8th Cir. 1995); Citizens to Establish a Reform Party v. Priest, 325 Ark. 257, 926 S.W.2d 432 (1996); Standridge v. Priest, 334 Ark. 568, 976 S.W.2d 388 (1998).

### **7-7-204. Candidacy for multiple nominations prohibited.**

(a) A person who files as a candidate for nomination by a political party shall not be eligible to:

(1) Be the nominee of any other political party for the same office during the primary election or the following general or special election; or

(2) Be an independent or write-in candidate for the same office at the general or special election.

(b) A person who is certified as an independent candidate shall not be eligible to be a write-in candidate or the nominee of any political party for the same office at the same general or special election.

**History.** Acts 1997, No. 343, § 1.

### **RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Ballot Access Restrictions in Representative Government: An Ode to the Wasted Vote, 26 U. Ark. Little Rock L. Rev. 703.

### **7-7-205. Petition requirements for new political parties.**

(a)(1) A group desiring to form a new political party shall do so by filing a petition with the Secretary of State.

(2) The petition shall contain at the time of filing the signatures of at least ten thousand (10,000) registered voters in the state.

(3) The Secretary of State shall not accept for filing any new party petition that is not prima facie sufficient at the time of filing.

(4)(A) No signature shall be counted unless the date of the signature appears on the petition.

(B) No signature that is dated more than ninety (90) days before the date the petition is submitted shall be counted.

(5)(A) The petition shall declare the intent of organizing a political party, the name of which shall be stated in the declaration.

(B) No political party or group shall assume a name or designation that is so familiar, in the opinion of the Secretary of State, as to confuse or mislead the voters at an election.

(6) A new political party that wishes to select nominees for the next general election shall file a sufficient petition no later than forty-five (45) days before the preferential primary election.

(b)(1) The Secretary of State shall determine the sufficiency of the signatures submitted within thirty (30) days of filing.

(2) If the petition is determined to be insufficient, the Secretary of State shall forthwith notify the sponsors in writing, through their designated agent, and shall set forth his or her reasons for so finding.

(c)(1) Upon certification of sufficiency of the petition by the Secretary of State, a new political party shall be declared by the Secretary of State.

(2) A new political party formed by the petition process shall nominate candidates by convention for the first general election after certification.

(3) A candidate nominated by convention shall file a political practices pledge with the Secretary of State or county clerk, as the case may be, no later than noon of the date of the preferential primary election.

(4) If the new party maintains party status by obtaining three percent (3%) of the total vote cast for the office of Governor or nominees for presidential electors at the first general election after certification, the new political party shall nominate candidates in the party primary as set forth in § 7-7-101 et seq.

(5) Any challenges to the certification of the sufficiency of the petition by the Secretary of State shall be filed with the Pulaski County Circuit Court.

**History.** Acts 1997, No. 886, § 4; 2003, No. 1165, §§ 8, 9; 2007, No. 821, § 1; 2009, No. 188, § 2; 2009, No. 959, § 37; 2011, No. 1036, § 2.

**Amendments.** The 2007 amendment substituted “to the signatures of at least ten thousand (10,000) registered voters in the state” for “to at least three percent (3%) of the total number of votes cast for the office of Governor or nominees for presidential electors, whichever is less, at the last preceding election” in (a)(2); substituted “any sixty-day period” for “the period beginning one hundred fifty (150) days prior to the deadline for filing the petitions with the Secretary of State” in (a)(4); deleted former (c) and (f) and redesignated the remaining subdivisions accordingly; and rewrote present (d).

The 2009 amendment by No. 188 substituted “ninety-day” for “sixty-day” in (a)(4).

The 2009 amendment by No. 959 deleted “qualified electors of this state equal in number to the signatures of” following “signatures of” in (a)(2).

The 2011 amendment rewrote (a)(4); redesignated former (b) as present (a)(5); deleted “and of participating in the next general election” following “declaration” in (a)(5)(A); added (a)(6); redesignated former (c) and (d) as present (b)(1) and (b)(2); redesignated former (e) as present (c); inserted “of the petition” in present (c)(1); inserted “general” preceding “election” in present (c)(2) and (c)(4); redesignated former (f) as present (c)(5); and inserted “the sufficiency of the petition by” in (c)(5).

## RESEARCH REFERENCES

**ALR.** Validity, construction, and application of state statutes governing “minor political parties”. 120 A.L.R.5th 1.

**U. Ark. Little Rock L. Rev.** Ballot

Access Restrictions in Representative Government: An Ode to the Wasted Vote, 26 U. Ark. Little Rock L. Rev. 703.



### CASE NOTES

#### ANALYSIS

Constitutionality.  
Signature Requirement.

#### Constitutionality.

To the extent that it fails to provide unrecognized political parties with a meaningful opportunity to participate in special elections, Arkansas' party recognition scheme, as set forth in this section, violates rights guaranteed by the First and Fourteenth Amendments to the United States Constitution of freedom of speech and association, due process, and equal protection. *Green Party of Ark. v. Priest*, 159 F.2d 1140 (E.D. Ark. 2001).

Requirement that a political party obtain signatures of a certain percentage of voters to obtain party certification is not narrowly drawn to serve a compelling state interest and unconstitutionally burdens the associational and equal protec-

tion rights of a party and its candidates; the legislature determined in § 7-7-103 that the set number of signatures for independent candidates is sufficient to demonstrate the required modicum of support, and there is no basis for requiring a larger number of signatures for a party. *Green Party of Arkansas v. Daniels*, 445 F. Supp. 2d 1056 (E.D. Ark. 2006).

#### Signature Requirement.

If 10,000 signatures are sufficient to demonstrate a modicum of support for an independent candidate under § 7-7-103(c)(2), then 10,000 signatures are also sufficient to demonstrate a modicum of support for a new political party, especially where the legislature has also established that a sufficient demonstration of a modicum of support is established in both instances by a 3% signature requirement. *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

### SUBCHAPTER 3 — CONDUCT OF PRIMARY

#### SECTION.

- 7-7-301. Party pledges, affidavits of eligibility, and party filing fees.
- 7-7-302. Selection of primary election officials.
- 7-7-303. Precincts — Boundaries.
- 7-7-304. Names to be included on ballots — Withdrawal — Unopposed candidates — Designation of position — Necessity of general primary.
- 7-7-305. Printing of ballots — Form — Draw for ballot position.

#### SECTION.

- 7-7-306. Partisan and nonpartisan judicial general ballots.
- 7-7-307. Additional voter qualifications.
- 7-7-308. Voting procedure and requirements.
- 7-7-309. Canvass and certification of returns.
- 7-7-310. [Repealed.]
- 7-7-311. [Repealed.]
- 7-7-312. [Repealed.]
- 7-7-313. Unopposed races.

**Cross References.** Preelection proceedings, § 7-5-201 et seq.

**Effective Dates.** Acts 1972 (Ex. Sess.), No. 41, § 4: Feb. 18, 1972. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present requirements that primary election officials reside in the ward or voting precinct in which such official is appointed to serve is unreasonably restrictive and may result in it being very difficult to obtain election officials to conduct primary elections in this state and

that it is essential to the proper and efficient conduct of such election that this requirement be removed immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 157, § 10: Feb. 20, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present laws of the

state, that separate or common polling places cannot be established by county committees in counties using voting machines without attendant substantial costs; that it is essential to the proper and economical administration of the election laws of this state that legislation be enacted immediately to provide that respective county committees or county election commissions in counties using voting machines may designate separate and/or common polling places where all elections can be held and to provide for a minimum number of election officials to serve at such polling places so that substantial economies can be realized in the conduct of such elections. Therefore, an emergency is hereby declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 901, § 21: Apr. 4, 1995. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the state should provide for a state supported political primary system; and that this act should become effective immediately for the proper administration of this act. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the

public peace, health and safety shall be in full force and effect from and after its passage and approval."

Identical Acts 1995, Nos. 925 and 939, § 3: Jan. 1, 1996.

Identical Acts 1995, Nos. 928 and 936, § 3: Jan. 1, 1996.

Identical Acts 1995, Nos. 946 and 963, § 14: Jan. 1, 1996.

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 1185, § 21: Oct. 2, 2011.

## RESEARCH REFERENCES

**Am. Jur.** 25 *Am. Jur. 2d*, Elections, § 147 et seq.

**C.J.S.** 29 *C.J.S.*, Elections, § 116 et seq.

### 7-7-301. Party pledges, affidavits of eligibility, and party filing fees.

(a) A political party may impose a filing fee for candidates seeking nomination by that party. The filing fee for county, municipal, and township offices shall be fixed by the county committee, as authorized by the state executive committee. For all other races, the filing fee shall be established by the state executive committee. On or before noon of the last day of the political party filing period, all candidates at primary elections of political parties shall file an affidavit of eligibility and any pledge required by such party and shall pay the party filing fees required by the party, as follows:

(1) Candidates for United States Senator, for United States Representative, and for all state offices shall file the pledge and the affidavit

of eligibility and pay the party filing fees with the secretary of the state committee of the political party or his or her designated agent;

(2) Candidates for district offices, including, but not limited to, the offices of State Representative and State Senator, shall file the pledge and affidavit of eligibility with the secretary of the state committee of the political party or his or her designated agent and pay the party filing fees with the secretary of the state committee of the political party or his or her designated agent; and

(3) All candidates for county, municipal, and township offices, candidates for county committee member, and delegates to the county convention shall file the pledge and the affidavit of eligibility and pay the party filing fees with the secretary of the county committee of the political party.

(b) The county clerk shall not accept for filing the political practices pledge of any candidate for nomination by a political party to any county, township, or partisan municipal office, nor shall the Secretary of State accept for filing the political practices pledge of any candidate for nomination by a political party to any state or district office, unless the candidate first files a party certificate.

(c) Any candidate who shall fail to file the party pledge and affidavit of eligibility and pay the party filing fee at the time and in the manner as provided in this section shall not receive a party certificate and shall not have his or her name printed on the ballot at any primary election.

(d) The names of candidates who file with the state committee as provided in this section shall be certified to the various county committees and the various county boards of election commissioners in the manner and at the time provided in § 7-7-203.

**History.** Acts 1969, No. 465, Art. 1, § 9; 1977, No. 169, § 1; A.S.A. 1947, § 3-109; Acts 1995, No. 901, § 5; 1997, No. 886, § 5; 2003, No. 1731, § 5; 2009, No. 1480, § 43.  
**Amendments.** The 2009 amendment inserted “affidavits of eligibility” in the section heading; inserted “and the affida-

vit of eligibility” or variants throughout; rewrote the last sentence of the introductory language of (a); deleted (b) and redesignated the remaining subsections accordingly; inserted “receive a party certificate and shall not” in (c); and substituted “§ 7-7-203” for “§ 7-7-203(d)” in (d).

RESEARCH REFERENCES

**Ark. L. Rev.** The Constitutionality of Filing Fees for Political Candidates in Primary Elections: An Arkansas Analysis, 30 Ark. L. Rev. 49.

CASE NOTES

ANALYSIS

Constitutionality.  
Deadline for Payment.  
Party Pledges.  
Political Practices Pledge.

Constitutionality.

Allegations by plaintiff that ballot fees collected under this section were unreasonably high, where the plaintiff did not know the total of ballot fees collected for the period in question, stated a conclusion



rather than a fact as required by A.R.C.P., Rule 8; thus there was no basis for finding that this section was contrary to any principle of constitutional law. *Moorman v. Pulaski County Democratic Party*, 271 Ark. 908, 611 S.W.2d 519 (1981).

#### **Deadline for Payment.**

Candidate, who sent in his check for ballot fee on last permissible day, but whose check did not clear the bank when presented some days later did not pay ballot fee within designated period, though candidate tendered the cash for check as soon as he was informed that check had not cleared. *Fletcher v. Ray*, 220 Ark. 844, 250 S.W.2d 734 (1952) (decision under prior law).

A candidate for public office was not eligible for that office as his payment of the required filing fee by personal check that was returned for insufficient funds when presented to the bank for payment did not constitute payment prior to the

filing deadline. *Jacobs v. Yates*, 342 Ark. 243, 27 S.W.3d 734 (2000).

#### **Party Pledges.**

This legislation and § 7-7-203 leave it up to the political party to determine whether or not a party loyalty oath is required. *Baker v. Jacobs*, 303 Ark. 460, 798 S.W.2d 63 (1990).

#### **Political Practices Pledge.**

Failure to timely file a political practices pledge with the Secretary of State as required by § 7-6-102(e)(2)(B) is reason enough to prevent a candidate's name from appearing on the ballot. *Lewis v. West*, 318 Ark. 334, 885 S.W.2d 663 (1994).

**Cited:** *Rock v. Byrant*, 459 F. Supp. 64 (E.D. Ark. 1978); *State ex rel. Robinson v. Craighead County Bd. of Election Comm'rs*, 300 Ark. 405, 779 S.W.2d 169 (1989); *Hill v. Carter*, 357 Ark. 597, 184 S.W.3d 431 (2004).

### **7-7-302. Selection of primary election officials.**

The election officials of primary elections shall be selected in the same manner as for general elections and shall be subject to the same requirements as provided for general elections.

**History.** Acts 1969, No. 465, Art. 1, §§ 4, 12; 1971, No. 261, § 6; 1971, No. 451, § 1; 1972 (Ex. Sess.), No. 41, § 1; 1983, No. 395, § 1; A.S.A. 1947, §§ 3-104, 3-112; Acts 1995, No. 901, § 6; 1997, No. 886, § 6.

### **7-7-303. Precincts — Boundaries.**

The election precincts in all political party primary elections shall be the same as established by the county board of election commissioners for general elections.

**History.** Acts 1969, No. 465, Art. 1, § 11; 1971, No. 261, § 5; A.S.A. 1947, § 3-111; Acts 1989, No. 912, § 4; 1995, No. 901, § 7; 2009, No. 959, § 38.

**Amendments.** The 2009 amendment deleted (b).

### **7-7-304. Names to be included on ballots — Withdrawal — Unopposed candidates — Designation of position — Necessity of general primary.**

(a)(1) Not less than seventy-five (75) days before each preferential primary election, the Secretary of State shall certify to all county boards of election commissioners full lists of the names of all candidates who have filed party certificates with him or her to be placed on the ballots in their respective counties at the preferential primary election.

(2) A name of a person shall not be certified and shall not be placed on the ballot if prior to the certification deadline a candidate:

(A) Notifies the Secretary of State in writing, signed by the candidate and acknowledged before an officer authorized to take acknowledgements, of his or her desire to withdraw as a candidate for the office or position; or

(B) Dies.

(b)(1) Not less than seventy-five (75) days before each preferential primary election, the county clerk shall certify to the county board full lists of the names of all candidates who have filed party certificates with him or her to be placed on the ballot at the preferential primary election.

(2) A name of a person shall not be certified and shall not be placed on the ballot if prior to the certification deadline a candidate:

(A) Notifies the county clerk in writing, signed by the candidate and acknowledged before an officer authorized to take acknowledgements, of his or her desire to withdraw as a candidate for the office or position; or

(B) Dies.

(c)(1) The votes received by a person whose name appeared on the preferential primary ballot and who withdrew or died after the certification of the ballot shall be counted.

(2) If the person receives enough votes to win the nomination, a vacancy in nomination shall exist.

(3) If the person receives enough votes to advance to the general primary election, the person's name shall be printed on the general primary election ballot.

(4) If the person receives enough votes to win the general primary election, a vacancy in nomination shall exist.

(d) When only one (1) candidate qualifies for a particular office or position, the office or position and the name of the unopposed candidate shall be printed on the political party's ballot in all primary elections.

(e)(1) When there are two (2) or more nominees to be selected for the same office, such as state senator, state representative, justice of the peace, alderman, or for any other office, the proper committee shall require the candidates to designate in writing a particular position, i.e., Position Number 1, Position Number 2, Position Number 3, etc., at the time that a party pledge is required to be filed with the secretary of the committee.

(2) When a candidate has once filed and designated for a certain position, that candidate shall not be permitted to thereafter change the position.

(f)(1) If at the preferential primary election for a political party a candidate receives a majority of the votes cast for that office or position, the person shall be declared the party nominee and it shall not be necessary for the candidate's name to appear on the ballot at the general primary election.

(2) If no candidate receives a majority of the votes cast for an office or position at the preferential primary for a political party, the names of

the two (2) candidates of the political party who received the highest number of votes for an office or a position shall be placed upon the ballots at the general primary election.

**History.** Acts 1969, No. 465, Art. 1, § 10; 1971, No. 261, § 4; A.S.A. 1947, § 3-110; Acts 1989, No. 912, § 5; 1995, No. 901, § 8; 2003, No. 332, § 1; 2007, No. 1020, § 15; 2007, No. 1049, § 26; 2009, No. 1480, § 44; 2011, No. 1185, § 10.

**Amendments.** The 2007 amendment by No. 1020 substituted "Secretary of State" for "State Board of Election Commissioners" in (b); and deleted "or place" following the second occurrence of "office" in (d).

The 2007 amendment by No. 1049 added (b)(2) and made related changes.

The 2009 amendment rewrote the section.

The 2011 amendment substituted "seventy-five (75)" for "seventy (70)" in (a)(1) and (b)(1); inserted "deadline" in (a)(2) and (b)(2); and subdivided (e).

**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.

## CASE NOTES

### ANALYSIS

Political Practice Pledge.

Position Number.

Prerequisite to Acceptance of Certificate.

Withdrawal of Candidate.

### Political Practice Pledge.

Failure to timely file a political practice pledge with the Secretary of State as required under § 7-6-102(e)(2)(B), alone, is reason to prevent a candidate's name from appearing on the ballot. *Lewis v. West*, 318 Ark. 334, 885 S.W.2d 663 (1994).

### Position Number.

Former section requiring nominees to select position number when two or more nominees were to be selected applied to preferential primaries. *Cheek v. Hall*, 221 Ark. 92, 252 S.W.2d 68 (1952) (decision under prior law).

### Prerequisite to Acceptance of Certificate.

Nominee was required to select position in general election before Secretary of

State was required to accept certificate of nomination. *Cheek v. Hall*, 221 Ark. 92, 252 S.W.2d 68 (1952) (decision under prior law).

### Withdrawal of Candidate.

Withdrawal from race of candidate who received second largest number of votes at preferential primary did not give third highest candidate right to have his name placed on ballot for general primary. *Higgins v. Barnhill*, 218 Ark. 466, 236 S.W.2d 1011 (1951), overruled in part, *Nethercutt v. Pulaski County Special School Dist.*, 248 Ark. 143, 450 S.W.2d 777 (Ark. 1970) (decision under prior law).

**Cited:** *Smith v. Clinton*, 687 F. Supp. 1310 (E.D. Ark. 1988); *Ivy v. Republican Party*, 318 Ark. 50, 883 S.W.2d 805 (1994); *Republican Party v. Faulkner County*, 49 F.3d 1289 (8th Cir. 1995).

## 7-7-305. Printing of ballots — Form — Draw for ballot position.

(a) The ballots of the primary election shall be provided by the county board of election commissioners. The form of the ballots shall be the same as is provided by law for ballots in general elections in this state. A different color ballot may be used to distinguish between political parties.

(b) The order in which the names of the respective candidates are to appear on the ballots at all preferential and general primary elections



shall be determined by lot at the public meeting of the county board of election commissioners held not later than seventy-two (72) days before the preferential primary election. The county board shall give at least ten (10) days' written notice of the time and place of the meeting to the chairs of the county committees if the chairs are not members of the board, and at least three (3) days before the meeting, shall publish notice of the time and place of holding the meeting in some newspaper of general circulation in the county.

(c)(1)(A) Any person who shall file for any elective office in this state may use not more than three (3) given names, one (1) of which may be a nickname or any other word used for the purpose of identifying the person to the voters, and may add as a prefix to his or her name the title or an abbreviation of an elective public office the person currently holds.

(B) A person may use as the prefix the title of a judicial office in an election for a judgeship only if the person is currently serving in a judicial position to which the person has been elected.

(C) A nickname shall not include a professional or honorary title.

(2) The names and titles as proposed to be used by each candidate on the political practice pledge or, if the political practice pledge is not filed by the filing deadline, then the names and titles that appear on the party certificate shall be reviewed no later than one (1) business day after the filing deadline by the Secretary of State for state and district offices and by the county board of election commissioners for county, township, school, and municipal offices.

(3)(A) The name of every candidate shall be printed on the ballot in the form as certified by either the Secretary of State or the county board.

(B) However, the county board of election commissioners may substitute an abbreviated title if the ballot lacks space for the title requested by a candidate.

(C) The county board of election commissioners shall immediately notify a candidate whose requested title is abbreviated by the county board of election commissioners.

(4) A candidate shall not be permitted to change the form in which his or her name will be printed on the ballot after the deadline for filing the political practices pledge.

**History.** Acts 1969, No. 465, Art. 1, § 14; 1971, No. 261, § 7; A.S.A. 1947, § 3-114; Acts 1991, No. 408, § 1; 1995, No. 901, § 9; 1999, No. 1335, § 1; 2001, No. 799, § 1; 2001, No. 1835, § 1; 2003, No. 1731, § 6; 2007, No. 559, § 6; 2007, No. 1020, § 16; 2007, No. 1049, § 27; 2009, No. 959, § 39; 2011, No. 1185, § 11.

**Amendments.** The 2007 amendment by No. 559 substituted "Secretary of State" for "State Board of Election Com-

missioners" in (c)(2), and for "state board" in (c)(3).

The 2007 amendment by No. 1020, in (b), substituted "board of election commissioners" for "committee," "The county board shall give ten" for "Ten," and "meeting to the county committee and shall" for "meeting shall be given each member by the chair, vice-chair, or secretary of the committee. The chair, vice chair, or secretary shall."

The 2007 amendment by No. 1049 substituted “sixty-five (65) days” for “thirty-five (35) days” in (b).

The 2009 amendment, in (b), deleted “including candidates for federal, state, and local offices and including persons nominated for committee members and delegates to the county convention, and the order in which issues and measures” following “candidates,” inserted “at least” and “chairs of the,” and substituted “committees, if the chairs are not members of

the board, and shall, at least three (3) days before the meeting” for “committee and shall”; substituted “use as the prefix the title of a judicial office” for “use the prefix ‘Judge’, ‘Justice’, or ‘Chief Justice’” in (c)(1)(B); inserted (c)(3)(B) and (c)(3)(C); and made minor stylistic changes.

The 2011 amendment substituted “seventy-two (72)” for “sixty-five (65)” in (b).

**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.

### CASE NOTES

**Cited:** Republican Party v. Faulkner County, 49 F.3d 1289 (8th Cir. 1995); Citizens to Establish a Reform Party v. Priest, 325 Ark. 257, 926 S.W.2d 432 (1996).

### 7-7-306. Partisan and nonpartisan judicial general ballots.

(a) At each party primary and nonpartisan judicial general election each county board of election commissioners shall furnish separate ballots for each political party containing:

(1) The names of persons seeking offices to be voted on as a nominee or candidate of that political party;

(2) The names of all qualified candidates for the general election to nonpartisan judicial offices under § 7-10-101; and

(3) All measures and questions, if any, to be decided by the voters.

(b) The county board of election commissioners shall also furnish a separate nonpartisan ballot containing the names of all qualified candidates for the general election to nonpartisan judicial offices and all measures, if any, to be decided by the voters.

**History.** Acts 1969, No. 465, Art. 1, § 15; A.S.A. 1947, § 3-115; Acts 1995, No. 901, § 10; 2005, No. 67, § 18; 2009, No. 959, § 39.

**Amendments.** The 2009 amendment added (b); inserted (a)(3); and made related and minor stylistic changes.

### 7-7-307. Additional voter qualifications.

(a) Each political party may establish by party rules additional qualifications to those established by § 7-5-201 for eligibility to vote in primary elections of the party.

(b) However, any additional qualifications established by a political party shall comply with the National Voter Registration Act of 1993.

**History.** Acts 1969, No. 465, Art. 1, § 15; A.S.A. 1947, § 3-115; Acts 1995, No. 928, § 2; 1995, No. 936, § 2.

**A.C.R.C. Notes.** Acts 1995, No. 923, § 1, provided: “In the event that the National Voter Registration Act of 1993 is repealed by the United States Congress or is ruled unconstitutional or void or other-

wise invalidated by a court of competent jurisdiction, the following provisions of state statutory law enacted in order to comply with the National Voter Registration Act of 1993 shall be repealed:

“(1) References to voter registration activities conducted at public assistance agencies, disabilities agencies and any

other agencies designated by state law, except for the Office of Driver Services of the Department of Finance and Administration and all State Revenue Offices;

“(2) References to any data collection and record keeping requirements relating to voter registration activities conducted at public assistance agencies, disabilities agencies and any other agencies designated by state law, except for the Office of Driver Services of the Department of Finance and Administration and all State Revenue Offices;

“(3) References to declination forms and any voter registration activities, data

collection requirements and record keeping requirements relating to such forms;

“(4) References to Congressional District Voter Registration Files;

“(5) References to List Maintenance Files and related voter registration records, such as confirmation mailings; and

“(6) References in Amendment 51-10(c), as amended by the 80th General Assembly in 1995, to an address confirmation program.”

**U.S. Code.** The National Voter Registration Act of 1993, referred to in this section, is primarily codified as 42 U.S.C. § 1973gg et seq.

### RESEARCH REFERENCES

**ALR.** Constitutionality of voter participation provisions for primary elections. 120 A.L.R.5th 125.

#### 7-7-308. Voting procedure and requirements.

(a) The procedure for voting in primary elections is the same as for general elections.

(b) At the same time that the voter identifies himself or herself and the party primary or other election in which he or she intends to vote, the election official shall mark next to the voter's name on the precinct voter registration list the party primary or other election in which the voter chooses to vote.

**History.** Acts 1973, No. 157, § 4; A.S.A. 1947, § 3-126; Acts 1993, No. 487, § 3; 1995, No. 901, § 11; 1995, No. 946, § 10; 1995, No. 963, § 10; 1997, No. 886, § 7; 2005, No. 67, § 19; 2007, No. 1020, § 17; 2009, No. 959, § 40.

**Amendments.** The 2007 amendment rewrote (a)(5)(C); added (a)(8); rewrote (b); inserted “separate” in (e); and substituted “list-of-voters form” for “list” in (f).

The 2009 amendment rewrote (a); and deleted (c) through (g).

#### 7-7-309. Canvass and certification of returns.

The county board of election commissioners shall canvass the returns and examine the ballots when demanded. It may hear testimony, if offered, of fraudulent practices and illegal votes, may cast out illegal votes and fraudulent returns, may find the true and legal vote cast for each candidate, and shall certify the result not sooner than forty-eight (48) hours and not later than ten (10) days after the primary.

**History.** Acts 1969, No. 465, Art. 1, § 16; A.S.A. 1947, § 3-116; Acts 1995, No. 901, § 12; 1997, No. 886, § 8; 2001, No. 1475, § 2; 2007, No. 1020, § 18.

**Amendments.** The 2007 amendment inserted “not sooner than forty-eight (48) hours and.”



## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Election Law, 24 U. Ark. Little Rock L. Rev. 465.

**7-7-310. [Repealed.]**

**Publisher's Notes.** This section, concerning filing and preservation of returns, ballots, and other documents, was repealed by Acts 2009, No. 959, § 41. The section was derived from Acts 1969, No. 465, Art. 1, § 18; A.S.A. 1947, § 3-118;

Acts 1993, No. 487, § 4; 1995, No. 901, § 13; 1995, No. 925, § 1; 1995, No. 939, § 1; 1995, No. 946, § 11; 1995, No. 963, § 11; 1997, No. 886, § 9; 2005, No. 67, § 20.

**7-7-311. [Repealed.]**

**Publisher's Notes.** This section, concerning delivery and custody of ballots and stubs and destruction of stubs, was repealed by Acts 1997, No. 886, § 10. The

section was derived from Acts 1969, No. 465, Art. 1, § 19; A.S.A. 1947, § 3-119; Acts 1995, No. 901, § 14.

**7-7-312. [Repealed.]**

**Publisher's Notes.** This section, concerning common polling places, was repealed by Acts 2005, No. 67, § 21. The

section was derived from Acts 1991, No. 467, § 1; 1995, No. 901, § 15; 1995, No. 946, § 12; 1995, No. 963, § 12.

**7-7-313. Unopposed races.**

If there is a primary election in which only one (1) candidate has filed for the position by a filing deadline and there are no other ballot issues to be submitted for consideration, the county board of election commissioners may reduce the number of polling places or open no polling places on election day so that the election is conducted by absentee ballot and early voting only.

**History.** Acts 2009, No. 812, § 1.

**SUBCHAPTER 4 — CERTIFICATION OF NOMINATIONS**

## SECTION.

7-7-401. Certification of nominations.

7-7-402. Filing certificates of nomination.

## SECTION.

7-7-403. [Repealed.]

**Effective Dates.** Acts 1995, No. 901, § 21: Apr. 4, 1995. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the state should provide for a state supported political primary system; and that this act should become effective immediately for the proper administra-

tion of this act. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1789, § 12: Emergency clause failed. Emergency clause provided:

"It is found and determined by the General Assembly that Amendment 80 to the Arkansas Constitution becomes effective on July 1, 2001; that this implements the nonpartisan election of justices and judges as mandated by Amendment 80; and that to effectively implement Amendment 80,

this act should become effective on July 1, 2001. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective on July 1, 2001."

### RESEARCH REFERENCES

**Am. Jur.** 25 Am. Jur. 2d, Elections, § 141.

**C.J.S.** 29 C.J.S., Elections, § 135 et seq.

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### 7-7-401. Certification of nominations.

(a) The county board of election commissioners shall certify the nomination of all county, township, and municipal offices to the county committee of the political party, state committee of the political party, and county clerk. It shall further certify the vote of all candidates for United States, state, and district office to the state committee and the Secretary of State.

(b) The Secretary of State shall receive the returns from the county board of election commissioners and canvass and certify the result thereof as provided by law. When ordered by a circuit court as provided by law, the county board or its officers shall annul the certifications made and make certifications in accordance with the judgment of the circuit court.

(c) The nominations of any and all political parties for candidates chosen at a regular or special primary election held by the political party shall be certified by the county board of election commissioners.

(d)(1) Nominees of political parties chosen by a convention of delegates, in those circumstances in which nominations by political party conventions are authorized by law, shall be certified by the chair and secretary of the convention of delegates held by the political party.

(2) All certificates of nomination made by the chair and secretary of conventions or of county boards of election commissioners of primary elections shall be acknowledged before an officer authorized by law to take acknowledgments.

(e)(1) Nomination as a nonpartisan candidate for Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, or district judge shall be deemed certified upon the candidate's filing for office when a filing fee is paid or upon determination by the appropriate officer that sufficient signatures were obtained when the candidate seeks alternative ballot access.

(2) For any other office, nomination as an independent candidate without political party affiliation for election to any office shall be certified by petition of electors in the manner provided in § 7-7-103.

**History.** Acts 1969, No. 465, Art. 1, §§ 17, 20; 1971, No. 261, § 8; 1975, No. 601, §§ 3, 5; A.S.A. 1947, §§ 3-117, 3-120; Acts 1995, No. 901, § 16; 1997, No. 886, § 11; 2001, No. 1789, § 7.

### RESEARCH REFERENCES

**ALR.** Effect of irregularities or defects in primary petitions-State cases. 14 A.L.R.6th 543.

**U. Ark. Little Rock L. Rev.** Survey of

Legislation, 2001 Arkansas General Assembly, Election Law, 24 U. Ark. Little Rock L. Rev. 465.

### CASE NOTES

#### ANALYSIS

Election Contests.  
Jurisdiction of Circuit Court.

#### Election Contests.

The actual issuance of a certificate of nomination is not essential to the right to begin contest proceedings. *Wilson v. Land*, 166 Ark. 182, 265 S.W. 661 (1924) (decision under prior law).

Candidate's post-election challenge to a state senate runoff election was properly brought within the circuit or district in which alleged voter fraud occurred; further, the Secretary of State and the State Democratic Committee were not indis-

pensable parties for complete relief under Ark. R. Civ. P. 19 because the office of state senator was not a "state office" as that term had been differentiated in §§ 7-7-401 and 7-5-804, and Ark. Const. art. 5, §§ 3 and 4. *Willis v. Crumbly*, 368 Ark. 5, 242 S.W.3d 600 (2006).

#### Jurisdiction of Circuit Court.

The circuit court was without jurisdiction to restrain the State Democratic Committee from complying with a resolution by tabulating and certifying the results of an election pending determination of a contest. *Terry v. Harris*, 188 Ark. 60, 64 S.W.2d 80 (1933) (decision under prior law).

### 7-7-402. Filing certificates of nomination.

(a)(1) All certified lists of nominees as candidates for presidential electors and members of Congress and for state, judicial, and district officers, either by convention, primary election, or electors, shall be filed with the Secretary of State.

(2) All certified lists of nominees for county, township, and municipal offices shall be filed with the county board of election commissioners and the county clerk of the county in which they are to be voted for.

(b) Certified lists of nomination shall be filed within the time provided in § 7-7-203.

**History.** Acts 1969, No. 465, Art. 1, § 21; 1975, No. 601, § 4; A.S.A. 1947, § 3-121; Acts 1999, No. 656, § 1.

### RESEARCH REFERENCES

**ALR.** Effect of irregularities or defects in primary petitions-State cases. 14 A.L.R.6th 543.



## CASE NOTES

**Cited:** *Swiderski v. Goggins*, 257 Ark. 164, 514 S.W.2d 705 (1974); *Rock v. Byrant*, 459 F. Supp. 64 (E.D. Ark. 1978).

**7-7-403. [Repealed.]**

**Publisher's Notes.** This section, concerning declination of nomination, was repealed by Acts 2007, No. 1049, § 28.

The section was derived from Acts 1969, No. 465, Art. 1, § 22; A.S.A. 1947, § 3-122.

**SUBCHAPTER 5 — COUNTIES USING VOTING MACHINES**

## SECTION.

7-7-501 — 7-7-504. [Repealed.]

**7-7-501 — 7-7-504. [Repealed.]**

**A.C.R.C. Notes.** The repeal of § 7-7-504 by Acts 1995, No. 901 has been deemed to supersede its amendment by Acts 1995, Nos. 946 and 963. Former § 7-7-504 was amended by identical Acts 1995, Nos. 946 and 963, § 13, effective January 1, 1995, to read as follows: "(a) In voting machine counties where common polling places are established, the county clerk shall furnish each county committee represented at the polling place one (1) copy of the appropriate precinct voter registration list to determine each person's right to vote in any party primary being conducted at the common polling place.

"(b) Where separate polling places are established, a copy of the appropriate pre-

cinct voter registration list shall be delivered to each county committee by the county clerk."

**Publisher's Notes.** These sections, concerning counties using voting machines, were repealed by Acts 1995, No. 901, § 17. The sections were derived from:

7-7-501. Acts 1973, No. 157, § 5; A.S.A. 1947, § 3-127.

7-7-502. Acts 1973, No. 157, § 1; A.S.A. 1947, § 3-123.

7-7-503. Acts 1973, No. 157, § 2; A.S.A. 1947, § 3-124.

7-7-504. Acts 1973, No. 157, § 3; A.S.A. 1947, § 3-125; Acts 1995, No. 946, § 13, 1995, No. 963, § 13.

## CHAPTER 8

### FEDERAL ELECTIONS

## SUBCHAPTER.

1. GENERAL PROVISIONS.
2. SELECTION OF DELEGATES FOR NATIONAL CONVENTION.
3. PRESIDENTIAL ELECTORS.
4. SPECIAL RESIDENCY AND AGE REQUIREMENTS. [REPEALED.]

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#### RESEARCH REFERENCES

**Am. Jur.** 77 Am. Jur. 2d, United States, §§ 20-25, 43.

**Ark. L. Notes.** Cihak and Springman, HAVA and Arkansas Election Law Re-

form: Compliance and Promise, 2006 Arkansas L. Notes 1.

**C.J.S.** 91 C.J.S., United States, §§ 11-16, 28.

## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

7-8-101. Primaries — General law governs.

7-8-102. Filling Senate vacancies.

### SECTION.

7-8-103. Credentials of Senate appointee.

7-8-104. Filling vacancies in the House of Representatives.

**Effective Dates.** Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### 7-8-101. Primaries — General law governs.

All primaries, preferential and general, for the selection of nominees for federal offices, including those of the United States Senators and Representatives, shall be held on the same date and in the same manner as the preferential and general primaries for state, district, county, and township offices and shall be governed by the same procedure prescribed by this act.

**History.** Acts 1969, No. 465, Art. 3, § 1; A.S.A. 1947, § 3-301; Acts 2007, No. 987, § 3; 2009, No. 26, § 3; 2009, No. 375, § 4.

**Amendments.** The 2007 amendment added the (a) designation and added (b).

The 2009 amendment by acts Nos. 26 and 375 each deleted (b).

**Meaning of "this act".** Acts 1969, No. 465, codified as §§ 7-1-101, 7-1-103 — 7-1-105, 7-3-101 — 7-3-108, 7-4-101 — 7-4-105, 7-4-107 — 7-4-112, 7-5-101 —

7-5-103, 7-5-202 — 7-5-211, 7-5-301, 7-5-302, 7-5-304 — 7-5-309, 7-5-312 — 7-5-319, 7-5-401 — 7-5-403, 7-5-405 — 7-5-417, 7-5-501 — 7-5-509, 7-5-511 — 7-5-513, 7-5-515 — 7-5-531, 7-5-701 — 7-5-706, 7-5-801 — 7-5-809, 7-6-101 — 7-6-105, 7-7-101 — 7-7-105, 7-7-201 — 7-7-203, 7-7-301 — 7-7-307, 7-7-309, 7-7-310, 7-7-401 — 7-7-403, 7-8-101 — 7-8-104, 7-8-301, 7-8-302, 7-8-304 — 7-8-307, 25-16-801.

### 7-8-102. Filling Senate vacancies.

(a) When any vacancy occurs in the representation of the State of Arkansas in the United States Senate by death, resignation, or otherwise, the Governor shall have the power and authority to fill the vacancy by temporary appointment until the people fill the vacancy by election at the next-ensuing general election for state and county officers to be held more than sixty (60) days and less than twelve (12) months after the vacancy occurs.

(b) If no general election for state and county officers occurs within twelve (12) months after the vacancy, the Governor shall call a special election to be held in accordance with § 7-11-101 et seq. but in no event more than one hundred twenty (120) days after the vacancy occurs.

**History.** Acts 1969, No. 465, Art. 3, § 2; A.S.A. 1947, § 3-302; Acts 2005, No. 2145, § 14; 2007, No. 1049, § 29; 2009, No. 1480, § 45.

**Amendments.** The 2007 amendment rewrote (b).  
The 2009 amendment substituted “§ 7-11-101 et seq.” for “§ 7-5-103(b)” in (b).

**7-8-103. Credentials of Senate appointee.**

When the Governor shall make a temporary appointment of a United States Senator by authority of this subchapter, he or she shall deliver to the senator a credential in the following form:

“..... who was chosen United States Senator of the State of Arkansas, in pursuance of the Constitution of the United States of America, having died (resigned, or otherwise, as the case may be):

Therefore, I, ....., Governor of the State of Arkansas, have appointed ..... United States Senator to fill the said vacancy temporarily until the election of a United States Senator by the qualified electors of the state.

Given under my hand and the seal of the said state this .... day of ...., 20....

.....  
Governor of the State  
of Arkansas

Attest:  
....., Secretary of State.”

**History.**  
Acts 1969, No. 465, Art. 3, § 3; A.S.A. 1947, § 3-303; Acts 2005, No. 67, § 22.

**7-8-104. Filling vacancies in the House of Representatives.**

When any vacancy shall happen in the office of a member of the United States House of Representatives from this state by death, resignation, removal, or otherwise, it shall be the duty of the Governor, by proclamation, to order the sheriffs of the several counties to order an election to be held on a certain day to be named in the proclamation to fill the vacancy. The election shall be conducted in the same manner, and returns thereof made, as prescribed in this title for general elections.

**History.** Acts 1969, No. 465, Art. 3, § 4; A.S.A. 1947, § 3-304; Acts 1987, No. 248, § 3.



## SUBCHAPTER 2 — SELECTION OF DELEGATES FOR NATIONAL CONVENTION

### SECTION.

7-8-201. Preferential elections required — Apportionment of delegates.  
7-8-202, 7-8-203. [Repealed.]

### SECTION.

7-8-204. Rules for selection of delegates and alternates.  
7-8-205 — 7-8-211. [Repealed.]

**Publisher's Notes.** Former subchapter 2, as enacted by Acts 1985, No. 566, and which concerned the selection of delegates for national conventions, was repealed by Acts 1987, No. 123, § 16. That subchapter was derived from the following sources:

7-8-201. Acts 1985, No. 566, § 1; A.S.A. 1947, § 3-205.13.

7-8-202. Acts 1985, No. 566, § 2; A.S.A. 1947, § 3-205.14.

7-8-203. Acts 1985, No. 566, § 3; A.S.A. 1947, § 3-205.15.

7-8-204. Acts 1985, No. 566, § 4; A.S.A. 1947, § 3-205.16.

Former subchapter 2 as enacted by Acts 1987, No. 123 and which also concerned the selection of delegates for national conventions, was repealed by Acts 1989, No.

700, § 1. That subchapter was derived from the following sources:

7-8-201. Acts 1987, No. 123, § 1.

7-8-202. Acts 1987, No. 123, § 2.

7-8-203. Acts 1987, No. 123, § 3.

7-8-204. Acts 1987, No. 123, § 4; 1987 (1st Ex. Sess.), No. 28, § 1.

7-8-205. Acts 1987, No. 123, § 5; 1987 (1st Ex. Sess.), No. 28, § 2.

7-8-206. Acts 1987, No. 123, § 6; 1987 (1st Ex. Sess.), No. 28, § 3.

7-8-207. Acts 1987, No. 123, § 7; 1987 (1st Ex. Sess.), No. 28, § 4.

7-8-208. Acts 1987, No. 123, § 8.

7-8-209. Acts 1987, No. 123, § 9; 1987 (1st Ex. Sess.), No. 28, § 5.

7-8-210. Acts 1987, No. 123, § 10.

7-8-211. Acts 1987, No. 123, § 11.

### 7-8-201. Preferential elections required — Apportionment of delegates.

Each political party in the state desiring to select delegates to attend a quadrennial national nominating convention of the party to select a nominee for the office of President of the United States shall hold a preferential primary election in the state, and the delegates to the national party convention shall be apportioned to the presidential candidates whose names were on the ballot at the preferential primary or to “uncommitted” in the proportion that the votes cast for each candidate or for “uncommitted” bear to the total votes cast at the election, rounded to the closest whole number.

**History.** Acts 1989, No. 700, § 2; 1997, No. 450, § 1; 2005, No. 501, § 1; 2007, No. 987, § 4; 2009, No. 26, § 4; 2009, No. 375, § 5.

**Amendments.** The 2007 amendment redesignated former (a)(3)(A) as present (a)(3)(A)(i); added (a)(3)(A)(ii) and (a)(3)(A)(iii); deleted former (a)(3)(B)(iv) and made a minor punctuation and stylis-

tic change; added (a)(3)(C) and (a)(3)(D); deleted former (a)(5)(A) and redesignated the remaining subsections accordingly; and deleted “under the direction of the state board” following “commissioners” in present (a)(5)(A).

The 2009 amendment by acts Nos. 26 and 375 each deleted all the text of the section except (a)(1), removed the subsec-

tion designation, and deleted “presidential” preceding “preferential primary” in two places.

7-8-202, 7-8-203. [Repealed.]

**Publisher’s Notes.** These sections, concerning the date of the primary and payment of election expenses, were repealed by Acts 1997, No. 450, §§ 2 and 3.

They were derived from the following sources:  
7-8-202. Acts 1989, No. 700, § 2.  
7-8-203. Acts 1989, No. 700, § 2.

7-8-204. Rules for selection of delegates and alternates.

Each political party holding a preferential primary election in the state shall adopt appropriate rules for the selection of delegates and alternate delegates to the quadrennial national nominating convention of the party and to otherwise carry out the intent and purposes of this subchapter.

**History.** Acts 1989, No. 700, § 2; 1997, No. 450, § 4; 2005, No. 501, § 2; 2009, No. 26, § 5; 2009, No. 375, § 6.  
**Amendments.** The 2009 amendment

by acts Nos. 26 and 375 each deleted “presidential” preceding “preferential primary election.”

7-8-205 — 7-8-211. [Repealed.]

**Publisher’s Notes.** As to repeal of former §§ 7-8-205 — 7-8-211, see Publisher’s Note to this subchapter.

SUBCHAPTER 3 — PRESIDENTIAL ELECTORS

- SECTION.
- 7-8-301. Date of election.
  - 7-8-302. Election and certification of electors — Ballots — Contesting conventions — Vacancy.
  - 7-8-303. Right of nominee to be candidate for other office.

- SECTION.
- 7-8-304. Delivery and canvass of returns — Tie vote.
  - 7-8-305. Publication of results — Certification of election.
  - 7-8-306. Voting by electors — Expenses.
  - 7-8-307. Vacancy — Appointment — Exception.

**Effective Dates.** Acts 1972 (Ex. Sess.), No. 38, § 3: Feb. 16, 1972. Emergency clause provided: “It is hereby found and determined by the General Assembly that the 1971 Regular Session of the General Assembly enacted legislation to permit a person’s name to be printed on the ballot as a candidate for President or Vice-President and for some other office at the same election but that subsequent legislation enacted at the same session inadvertently

removed the provisions from the earlier act which permitted the same, and that this act should be given effect immediately in order to correct this situation in advance of the 1972 elections. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2011, No. 1185, § 21: Oct. 2, 2011.

### **7-8-301. Date of election.**

(a) There shall be elected by general ticket in the manner and with the effect provided in this subchapter, on the Tuesday next after the first Monday in November preceding the expiration of the term of office of each President of the United States, as many electors of President and Vice President of the United States as this state may be entitled to elect.

(b) If Congress should hereafter fix a different day for the election, then the election for electors shall be held on the day as shall be named by act of Congress.

(c) The election shall be conducted and returns thereof made as provided in § 7-8-302.

**History.** Acts 1969, No. 465, Art. 2, § 6;  
A.S.A. 1947, § 3-206.

### **7-8-302. Election and certification of electors — Ballots — Contesting conventions — Vacancy.**

Choosing and election of electors of President and Vice President of the United States shall be in the following manner:

(1)(A) In each year in which a President and Vice President of the United States are chosen, each political party or group in the state shall choose by its state convention electors of President and Vice President of the United States. The state convention of the party or group shall also choose electors at large if any are to be appointed for the state.

(B) The state convention of the party or group, by its chair and secretary, shall certify to the Secretary of State the total list of electors together with electors at large so chosen. The certificate shall be filed no later than September 15 in the year of the election. The filing of the certificate with the Secretary of State shall be deemed and taken to be the choosing and selection of the electors of this state, if the party or group is successful at the polls, as provided in this subchapter, in choosing their candidates for President and Vice President of the United States.

(C) The certification by the respective political parties or groups in this state of electors of President and Vice President shall be made to the Secretary of State within two (2) days after the state convention; (2)(A) Should more than one (1) certificate of choice and selection of electors of the same political party or group be filed by contesting conventions or contesting groups, it shall be the duty of the constitutional officers of this state within ten (10) days after the adjournment of the last of the conventions to meet in the office of the Governor and determine which set of nominees for electors of the



party or group was chosen and selected by the authorized convention of the party or group.

(B) The Secretary of State shall notify the state officers of the date, time, and place of the meeting.

(C)(i) At the meeting, a majority of the officers present, after notice to the chair and secretaries or managers of the conventions or groups and after a hearing, shall determine which set of electors was chosen by the authorized convention and shall so announce and publish that fact.

(ii) The decision shall be final, and the set of electors determined by the state officers to be chosen shall be the list or set of electors to be deemed elected if that party is successful at the polls, as herein provided;

(3) Should a vacancy occur in the choice of an elector, the vacancy may be filled by the state executive committee of the party or group, to be certified by the committee to the Secretary of State;

(4)(A) The names of the candidates of the several political parties or groups for electors of President and Vice President shall not be printed on the official ballot to be voted on in the election to be held on the day provided in § 7-8-301. In lieu of the names of the candidates for electors, the name of the candidate for President and the name of the candidate for Vice President with the particular political party designation of each shall be printed on the ballot. Each voter in this state may choose and elect one (1) list or set of electors from the several lists or sets of electors chosen and selected by the respective political parties or groups, by placing an appropriate mark on the ballot.

(B) Placing a cross within the square before the bracket enclosing the names of President and Vice President shall not be deemed and taken as a direct vote for the candidates for President and Vice President, or either of them, but shall only be deemed and taken to be a vote for the entire list or set of electors chosen by the political party or group so certified to the Secretary of State as herein provided. Voting by means of placing a cross in the appropriate place following the names of the candidates for President and Vice President shall not be deemed or taken as a direct vote for the candidates for President and Vice President, or either of them, but instead, as to the presidential vote, as a vote for the entire list or set of electors chosen by that political party or group so certified to the Secretary of State as herein provided;

(5)(A)(i) In order to have the name of a political party's candidates for President and Vice President printed on the ballot, a political party shall hold a presidential preferential primary election.

(ii) A new political party formed under the petition process may nominate by convention if the presidential election is the first general election after certification as a party by the Secretary of State.

(B) A political group desiring to have the names of its candidates for President and Vice President printed on the ballot shall file a

petition with the Secretary of State by noon on the first Monday of August of the year of the election. The petition shall contain at the time of filing the names of one thousand (1,000) qualified electors of the state declaring their desire to have printed on the ballot the names of their candidate for President and Vice President. The Secretary of State shall verify the sufficiency of the petition within ten (10) days from the filing of the petition. If the petition is determined to be insufficient, the Secretary of State shall notify in writing the political group through its designated agent and shall set forth his or her reasons for so finding.

(C) Any challenges to the certification of the Secretary of State shall be filed in the Pulaski County Circuit Court.

(D) No later than 12:00 noon on the seventy-fifth day before the election, a political group that qualifies by petition to place its candidate on the ballot shall submit a certificate of choice stating the names of its candidates for President and Vice President, signed under oath by either the chair, vice chair, or secretary of the political group's convention; and

(6)(A) Persons desiring to have their names printed on the ballot as independent candidates for President and Vice President shall file a petition with the Secretary of State by noon on the first Monday of August of the year of the election. The petition shall contain at the time of filing the names of one thousand (1,000) qualified electors of the state declaring their desire to have printed on the ballot the names of the persons desiring their names to be printed on the ballot as independent candidates for President and Vice President. The Secretary of State shall verify the sufficiency of the petition within ten (10) days from the filing of the petition. If the petition is determined to be insufficient, the Secretary of State shall notify in writing the persons desiring to have their names printed on the ballot as independent candidates for President and Vice President at the address or telephone number submitted with the petition and shall set forth his or her reasons for so finding.

(B) Any challenges to the certification of the Secretary of State shall be filed in the Pulaski County Circuit Court.

(C) By September 15 in the year of the election, independent candidates who qualify by petition to be on the ballot shall certify to the Secretary of State the total list of electors together with electors at large. The filing of the certificate with the Secretary of State shall be deemed and taken to be the choice and selection of the electors of this state, if the independent candidate is successful at the polls, as provided in this subchapter.

**History.** Acts 1969, No. 465, Art. 2, § 7; A.S.A. 1947, § 3-207; Acts 1991, No. 242, § 1; 1997, No. 450, § 5; 2001, No. 473, § 1; 2005, No. 501, § 3; 2007, No. 822, §§ 1, 2; 2009, No. 26, § 6; 2009, No. 375, § 7; 2009, No. 959, §§ 42, 43; 2011, No. 1185, § 12.

**Amendments.** The 2007 amendment, in (5), inserted "of the year of the election" in (B), deleted the last sentence in (B) and

deleted former (B)(i) through (iii), deleted former (C) and redesignated the following subdivisions accordingly, and substituted "September 1" for "September 15" in present (D); and added (6).

The 2009 amendment by acts Nos. 26 and 375 each deleted "presidential" preceding "preferential primary election" in (5)(A)(i),

The 2009 amendment by No. 959 made a minor stylistic change in (5)(A)(ii); sub-

stituted "No later than seventy (70) days before" for "By September 1 in the year of" in (5)(D); deleted (5)(E); and substituted "September 15" for "September 1" in (6)(C).

The 2011 amendment substituted "12:00 noon on the seventy-fifth day" for "seventy (70) days" in (5)(D).

**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.

## CASE NOTES

### ANALYSIS

New Political Party.  
Petitions.

#### New Political Party.

Arkansas law provides two means of forming a new political party: the convention process, which permits a political group to hold a convention to choose presidential candidates; or the petition process, which permits a political group to declare its intent to organize a political party. *Citizens to Establish a Reform Party v. Priest*, 325 Ark. 257, 926 S.W.2d 432 (1996).

#### Petitions.

Trial court erred in granting a writ of mandate to remove a presidential and a vice-presidential candidate from the state's ballots as petitioners who signed the petition to place the candidates on the ballot did not have to declare their intent to vote for those candidates. *Populist Party of Ark. v. Chesterfield*, 359 Ark. 58, 195 S.W.3d 354 (2004).

**Cited:** *Citizens to Establish a Reform Party v. Priest*, 970 F. Supp. 690 (E.D. Ark. 1996).

### 7-8-303. Right of nominee to be candidate for other office.

The appearance on the general election ballot of the name of a party nominee for the office of President or Vice President of the United States in lieu of the names of the candidates for electors for the offices shall not limit or restrict the party nominee so named from being a candidate in his or her own right for any office to be filled at the general election.

**History.** Acts 1972 (Ex. Sess.), No. 38, § 1; A.S.A. 1947, § 3-207.1.

### 7-8-304. Delivery and canvass of returns — Tie vote.

(a) The county clerks of the several counties shall make, within eight (8) days next after holding the election as provided in § 7-8-302, three (3) copies of the abstract of the votes cast for electors by each political party or group as indicated by the voter as provided in § 7-8-302 by a cross in the square to the right of the bracket as specified in § 7-8-302 and transmit by mail one (1) of the copies to the Governor, transmit another to the office of the Secretary of State, and retain the third in his or her office to be sent for by the Governor in case both the others should be mislaid.



(b) Within twenty (20) days after the holding of the election, and sooner if all the returns are received by either the Governor or by the Secretary of State, the constitutional officers of this state, or any two (2) of them, shall proceed, in the presence of the Governor, to open and canvass the election returns and to declare which set of candidates for President and Vice President received the highest number of votes so cast, and the candidates' party's electors shall be taken and deemed to be elected as electors of President and Vice President.

(c) Should two (2) or more sets of candidates for President and Vice President be returned with an equal and the highest vote, the Secretary of State shall cause a notice to be published, which notice shall name some day and place not less than five (5) days from the time of the publication of the notice upon which the constitutional officers of this state will decide by lot which of the sets of candidates for President and Vice President so equal and highest shall be declared to be highest. Upon the day and at the place so appointed in the notice, the constitutional officers shall so decide by lot and declare which is deemed highest of the sets of candidates for President and Vice President so equal and highest, thereby determining only that the electors chosen as provided in this subchapter by the candidates' party or group are thereby elected by general ticket to be the electors.

**History.** Acts 1969, No. 465, Art. 2, § 8;  
A.S.A. 1947, § 3-208.

### **7-8-305. Publication of results — Certification of election.**

Within five (5) days after the votes shall have been canvassed and the results declared or the result declared by lot as provided in § 7-8-304, the Governor shall:

- (1) Cause the result of the election to be published;
- (2) Proclaim the persons composing the list so elected to be the electors of President and Vice President by mailing the electors a triplicate certificate of their appointment under the seal of the state; and
- (3) Transmit under the Seal of the State of Arkansas to the Secretary of State of the United States the certificate of the election of the electors as required by the laws of Congress.

**History.** Acts 1969, No. 465, Art. 2, § 9;  
A.S.A. 1947, § 3-209.

### **7-8-306. Voting by electors — Expenses.**

(a) The electors, elected as provided in this subchapter, shall meet at the office of the Secretary of State, in a room to be designated by him or her in the State Capitol Building, at the time appointed by the laws of the United States at the hour of 10:00 A.M. of that day, and give their votes for President and for Vice President of the United States, in the

manner herein provided, and perform such duties as are or may be required by law.

(b) Each elector shall receive for every twenty (20) miles of necessary travel in going to the seat of government to give his or her vote and returning to his or her residence, to be computed by the most usual route, the sum of three dollars (\$3.00), to be paid on the warrant of the Auditor of State, out of any money in the State Treasury not otherwise appropriated. Any person appointed by the electors assembled to fill a vacancy shall also receive the compensation provided for electors appointed.

**History.** Acts 1969, No. 465, Art. 2, § 10; A.S.A. 1947, § 3-210.

### **7-8-307. Vacancy — Appointment — Exception.**

In case any person duly elected an elector of President and Vice President of the United States shall fail to attend at the Capitol on the day on which his or her vote is required to be given, it shall be the duty of the electors of President and Vice President attending at the time and place to appoint persons to fill the vacancies. Should the person or persons chosen pursuant to this subchapter arrive at the place aforesaid before the votes for President and Vice President are actually given, the person or persons appointed to fill the vacancy shall not act as an elector of President and Vice President.

**History.** Acts 1969, No. 465, Art. 2, § 11; A.S.A. 1947, § 3-211.

## **SUBCHAPTER 4 — SPECIAL RESIDENCY AND AGE REQUIREMENTS**

### **SECTION.**

7-8-401 — 7-8-405. [Repealed.]

### **7-8-401 — 7-8-405. [Repealed.]**

**Publisher's Notes.** This subchapter was repealed by identical Acts 1995, Nos. 928 and 936, § 1. The sections were derived from the following sources:

7-8-401. Acts 1971, No. 37, § 1; A.S.A. 1947, § 3-212.

7-8-402. Acts 1971, No. 37, § 2; A.S.A. 1947, § 3-213.

7-8-403. Acts 1971, No. 37, § 4; A.S.A. 1947, § 3-215.

7-8-404. Acts 1971, No. 37, § 3; A.S.A. 1947, § 3-214.

7-8-405. Acts 1971, No. 37, § 5; A.S.A. 1947, § 3-216.

## **CHAPTER 9**

# **INITIATIVES, REFERENDA, AND CONSTITUTIONAL AMENDMENTS**

### **SUBCHAPTER.**

#### **1. PETITION AND ELECTION PROCEDURE.**

## SUBCHAPTER

2. LEGISLATIVE PROPOSAL OF CONSTITUTIONAL AMENDMENTS.
3. CONSTITUTIONAL CONVENTIONS.
4. DISCLOSURE FOR MATTERS REFERRED TO VOTERS.
5. REVIEW OF INITIATIVE PETITIONS.

## RESEARCH REFERENCES

**Ark. L. Notes.** Cihak and Springman, HAVA and Arkansas Election Law Reform: Compliance and Promise, 2006 Arkansas L. Notes 1.

## SUBCHAPTER 1 — PETITION AND ELECTION PROCEDURE

## SECTION.

- 7-9-101. Definitions.
- 7-9-102. Duties of election officers — Penalty for failure to perform.
- 7-9-103. Signing of petition — Penalty for falsification.
- 7-9-104. Form of initiative petition — Sufficiency of signatures.
- 7-9-105. Form of referendum petition — Sufficiency of signatures.
- 7-9-106. Required attachments to petitions.
- 7-9-107. Approval of ballot titles and popular names of petitions prior to circulation — Publication.
- 7-9-108. Procedure for circulation of petition.
- 7-9-109. Form of verification — Penalty for false statement.
- 7-9-110. Designation of number and popular name.
- 7-9-111. Determination of sufficiency of petition — Corrections.
- 7-9-112. Failure to act on petition — Mandamus — Injunction.
- 7-9-113. Publication of notice.

## SECTION.

- 7-9-114. Abstract of proposed measure.
- 7-9-115. Furnishing ballot title and popular name to election commissioners.
- 7-9-116. Captions and designations of numbered issues.
- 7-9-117. Ballot form.
- 7-9-118. Failure to place proposal on ballot — Manner of voting.
- 7-9-119. Counting, canvass, and return of votes — Proclamation of result — Effective date.
- 7-9-120. Printing of approved measures with general laws — Certification of city ordinances.
- 7-9-121. Contest of returns and certification.
- 7-9-122. Adoption of conflicting measures.
- 7-9-123. Preservation of records.
- 7-9-124. Voter registration signature imaging system — Creation of fund.
- 7-9-125. Definitions — Prohibition of profit — Penalties — Freedom of information.

**Preambles.** Acts 1933, No. 71 contained a preamble which read: "Whereas, there is considerable confusion with reference to the numbers by which the several amendments to the Constitution of Arkansas should be designated, and the names and numbers by which initiated and referred acts should be designated on the ballots;

"Now, therefore ... "

**Effective Dates.** Acts 1911, No. 2 (Ex. Sess.), § 17: effective on passage.

Acts 1913, No. 135, § 13: Approved Mar. 6, 1913. Emergency declared.

Acts 1933, No. 71, § 3: approved Mar. 3, 1933. Emergency clause provided: "It being necessary for the welfare of the state that in all matters affecting amendments to the Constitution, and the measures to be voted on by the people, there should be



definiteness and certainty with reference to the amendment or measure affected, an emergency is declared to exist, and this act shall be in full force and effect from and after its passage."

Acts 1989, No. 280, § 10: Mar. 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that in order to facilitate the operation of Amendment 7 to the Constitution of Arkansas it is immediately necessary to simplify the process of obtaining signatures on public initiative petitions, allow for the option of binding review by the Arkansas Supreme Court of the popular name and ballot title of public initiatives substantially prior to the date when signatures on such petitions must be filed with the Secretary of State, and provide assistance to the Secretary of State with respect to verification of signatures on such petitions. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety,

shall be in full force and effect from and after its passage and approval."

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### RESEARCH REFERENCES

**Am. Jur.** 16 Am. Jur. 2d, Const. Law, §§ 42, 43.

42 Am. Jur. 2d, Init. & Ref., § 21 et seq.

**Ark. L. Notes.** Sheppard, *Intelligible, Honest, and Impartial Democracy: Making Laws at the Arkansas Ballot Box, or Why Jim Hannah and Ray Thorton were Right about May v. Daniels*, 2005 Arkansas L. Notes 123.

**C.J.S.** 16 C.J.S., Const. Law, § 7.

82 C.J.S., Statutes, § 115 et seq.

**U. Ark. Little Rock L.J.** Kennedy, *Initiated Constitutional Amendments in Arkansas: Strolling Through the Mine Field*, 9 U. Ark. Little Rock L.J. 1.

Survey, *Miscellaneous*, 12 U. Ark. Little Rock L.J. 653.

### CASE NOTES

#### Ordinances.

Former law which prescribed the method of referring ordinances to the people applied only to general legislation in which all the electors of the city might participate and not to a city ordinance with reference to a local improvement district. *Hodges v. Board of Imp.*, 117 Ark. 266, 174 S.W. 542 (1915).

Ordinance raising rates charged by private utility higher than those provided for in original franchise was subject to referendum. *Terral v. Arkansas Light & Power Co.*, 137 Ark. 523, 210 S.W. 139 (1919).

Ordinances creating improvement districts are not subject to referendum. *Paving Dist. v. Little*, 170 Ark. 1160, 282 S.W. 971 (1926).

Ordinance providing for the construction of sewers and the issuance of bonds therefor was subject to referendum. *Carpenter v. Paragould*, 198 Ark. 454, 128 S.W.2d 980 (1939).

**Cited:** *Becker v. Riviere*, 270 Ark. 219, 604 S.W.2d 555 (1980).

**7-9-101. Definitions.**

As used in this subchapter:

(1) “Act” means any act having general application throughout the state, whether originating in the General Assembly or proposed by the people, and referred acts;

(2) “Amendment” means any proposed amendment to the Arkansas Constitution, whether proposed by the General Assembly or by the people;

(3) “Canvasser” means a person who circulates an initiative or referendum petition or a part or parts of an initiative or referendum petition to obtain the signatures of petitioners thereto;

(4) “Election” means a regular general election at which state and county officers are elected for regular terms;

(5) “Legal voter” means a person who is registered at the time of signing the petition pursuant to Arkansas Constitution, Amendment 51;

(6) “Measure” means either an amendment or an act;

(7) “Petitioner” means a person who signs an initiative or referendum petition ordering a vote upon an amendment or an act having general application throughout the state; and

(8) “Sponsor” means a person or group of persons filing an initiative or referendum petition with the Secretary of State.

**History.** Acts 1943, No. 195, § 1; A.S.A. 1947, § 2-201; Acts 1997, No. 646, § 1.

**CASE NOTES****ANALYSIS**

Legal Voter.  
Measure.

**Legal Voter.**

Trial court erred in dismissing appellants’ complaint challenging the validity of the certification of a “wet/dry” initiative petition for placement upon a ballot at a general election because Ark. Const., Amend. 51, § 9(c)(1), Ark. Const., Art. 5, § 1, and subdivision (5) of this section did not allow persons to sign the petition

before they became registered voters. *Mays v. Cole*, 374 Ark. 532, 289 S.W.3d 1 (2008).

**Measure.**

Under subdivision (1) of this section, “measure” applied to acts having general application throughout the state, and this definition did not conflict with the definition of measure found in Amendment 7 to Ark. Const. art. 5, § 1; thus there was no conflict between subdivision (1) and § 7-9-106(b). *Kyzar v. City of W. Memphis*, 360 Ark. 454, 201 S.W.3d 923 (2005).

**7-9-102. Duties of election officers — Penalty for failure to perform.**

(a)(1) The duties imposed by this act upon members of the State Board of Election Commissioners and county boards of election commissioners, election officials, and all other officers expressly named in this act are declared to be mandatory.

(2) These duties shall be performed in good faith within the time and in the manner provided.

(b)(1) If any member of any board, any election official, or any other officer so charged with the duty shall knowingly and willfully fail or refuse to perform his or her duty or shall knowingly and willfully commit a fraud in evading the performance of his or her duty, then he or she shall be guilty of a violation.

(2) Upon conviction, he or she shall be fined any sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) and also shall be removed from office.

**History.** Acts 1943, No. 195, § 12; 195, codified as §§ 7-9-101 — 7-9-103, A.S.A. 1947, § 2-223; Acts 1997, No. 646, 7-9-107, 7-9-108, 7-9-111 — 7-9-113, 7-9-§ 2; 2005, No. 1994, § 74. 115 — 7-9-119, 7-9-121, 7-9-123.

**Meaning of “this act”.** Acts 1943, No.

### 7-9-103. Signing of petition — Penalty for falsification.

(a)(1) Any person who is a qualified elector of the State of Arkansas may sign an initiative or referendum petition in his or her own proper handwriting, and not otherwise, to order an initiative or referendum vote upon a proposed measure or referred act.

(2) Any person who is an elector of any municipality of this state may sign any petition for the referendum of any ordinance passed by the council of the municipality.

(b) A person shall be deemed guilty of a Class A misdemeanor if the person:

(1) Signs any name other than his or her own to any petition;

(2) Knowingly signs his or her name more than once to any petition;

(3) Knowingly signs a petition when he or she is not legally entitled to sign it;

(4) Knowingly and falsely misrepresents the purpose and effect of the petition or the measure affected for the purpose of causing anyone to sign a petition;

(5) Acting in the capacity of canvasser, knowingly makes a false statement on a petition verification form; or

(6) Acting in the capacity of a notary, knowingly fails to witness a canvasser's affidavit either by witnessing the signing of the instrument and personally knowing the signer or by being presented with proof of identity of the signer.

**History.** Acts 1913, No. 135, § 3; C. & M. Dig., § 7505; Pope's Dig., § 9564; Acts 1943, No. 195, § 2; A.S.A. 1947, §§ 2-202, 2-401; Acts 1991, No. 719, § 1; 1997, No. 646, § 3.

**Cross References.** Criminal impersonation, § 5-37-208.  
Forgery, § 5-37-201.



## CASE NOTES

## ANALYSIS

Constitutionality.  
Right of Referendum.

**Constitutionality.**

Arkansas had a legitimate state interest in making the signing of a ballot petition a crime in certain instances and core political speech was not impeded under this process, notwithstanding the argument that county registrars' voter registration lists should not be definitive evidence that a person is a registered voter because persons may consider themselves registered after completing a registration card but before the application is

processed by the county; since the registered voter requirement seeks to exclude those signatures that are falsely obtained or forged and aims to protect the state's initiative process from abuse, this section's regulations of the initiative procedure did not restrict political speech. *Hoyle v. Priest*, 265 F.3d 699 (8th Cir. 2001).

**Right of Referendum.**

The right of referendum is granted to the people on legislation of every character, whether the legislation affects all or a part of the citizens of the municipality affected. *Carpenter v. Paragould*, 198 Ark. 454, 128 S.W.2d 980 (1939).

**7-9-104. Form of initiative petition — Sufficiency of signatures.**

(a) The petition for any ordinance, law, or amendment to the Arkansas Constitution proposed by initiative shall be on substantially the following form:

## "INITIATIVE PETITION

To the Honorable \_\_\_\_\_  
Secretary of State of the State of Arkansas, or County Clerk, or City Clerk

We, the undersigned legal voters of the State of Arkansas, or \_\_\_\_\_ County, Arkansas, or City of \_\_\_\_\_, or Incorporated Town of \_\_\_\_\_, Arkansas (as the case may be), respectfully propose the following amendment to the Constitution of the State or law or ordinance (as the case may be), to wit:

(Here insert title and full text of measure proposed.)

---

and by this, our petition, order that the same be submitted to the people of said state, or county, or municipality (as the case may be), to the end that the same may be adopted, enacted, or rejected by the vote of legal voters of said (state, county, or municipality) at the regular general election to be held in said \_\_\_\_ on the \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_, and each of us for himself or herself says:

I have personally signed this petition; I am a legal voter of the State of Arkansas, and my printed name, date of birth, residence, city or town of residence, and date of signing this petition are correctly written after my signature."

(b) The information provided by the person on the petition may be used as evidence of the validity or invalidity of the signature. However, if a signature of a registered voter on the petition is sufficient to verify

the voter's name, then it shall not be adjudged invalid for failure to sign the name or write the residence and city or town of residence exactly as it appears on voter registration records, for failure to print the name in the space provided, for failure to provide the correct date of birth, nor for failure to provide the correct date of signing the petition, all the information being an aid to verification rather than a mandatory requirement to perfect the validity of the signature.

(c) No additional sheets of voter signatures shall be attached to any petition unless the sheets contain the full language of the petition.

**History.** Acts 1911 (Ex. Sess.), No. 2, § 4; C. & M. Dig., § 9761; Pope's Dig., § 13285; A.S.A. 1947, § 2-203; Acts 1989, No. 280, § 1; 1991, No. 42, § 1; 1997, No. 646, § 4; 2001, No. 789, § 1; 2005, No. 67, § 23.

**Publisher's Notes.** Ark. Const.,

Amend. 7 repealed Acts 1911 (Ex. Sess.), No. 2 to the extent of any conflict therewith.

Municipalities may provide for initiative and referendum as to their local legislation, see Ark. Const., Amend. 7.

### CASE NOTES

#### **Sufficiency of Petition.**

Where the election petitions circulated and signed did not contain the title and full text of the measure actually proposed to the voters at the general election, substantial compliance with the recommended form, including the ballot title and full text, is contemplated under the

specific terms of this section, and the ballot title was sufficient because it alleged the general purpose of the act to be referred, and the details of the referred act are not required to be set out in the petition. *Reichenbach v. Serio*, 309 Ark. 274, 830 S.W.2d 847 (1992).

### **7-9-105. Form of referendum petition — Sufficiency of signatures.**

(a) The petition and order of referendum shall be on substantially the following form:

#### **"PETITION FOR REFERENDUM**

To the Honorable \_\_\_\_\_

Secretary of State of the State of Arkansas, or County Clerk, or City Clerk

We, the undersigned legal voters of the State of Arkansas, or \_\_\_\_\_ County, Arkansas, or City or Incorporated Town of \_\_\_\_\_, Arkansas, (as the case may be) respectfully order by this, our petition, that Act No. \_\_\_\_ of the General Assembly of the State of Arkansas, approved on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, entitled 'An Act \_\_\_\_\_' or Ordinance No. \_\_\_\_, passed by the county quorum court, the city (or town) council of the City (or Incorporated Town), or County of \_\_\_\_\_, Arkansas, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, entitled, 'An Ordinance \_\_\_\_\_,' be referred to the people of said state, county, or municipality (as the case may be), to the end that the same may be approved or rejected by the vote of the legal voters of the state, or of said county or municipality (as

the case may be) at the biennial (or annual, as the case may be, if a city ordinance) regular general election (or at a special election, as the case may be) to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; and each of us for himself or herself says:

I have personally signed this petition; I am a legal voter of the State of Arkansas, and my printed name, date of birth, residence, city or town of residence, and date of signing this petition are correctly written after my signature."

(b) The information provided by the person on the petition may be used as evidence of the validity or invalidity of the signature. However, if a signature of a registered voter on the petition is sufficient to verify the voter's name, then it shall not be adjudged invalid for failure to sign the name or write the residence and city or town of residence exactly as it appears on voter registration records, for failure to print the name in the space provided, for failure to provide the correct date of birth, nor for failure to provide the correct date of signing the petition, all of that information being an aid to verification rather than a mandatory requirement to perfect the validity of the signature.

(c) No additional sheets of voter signatures shall be attached to any petition unless the sheets contain the full language of the petition.

**History.** Acts 1911 (Ex. Sess.), No. 2, § 2; C. & M. Dig., § 9766; Pope's Dig., § 13287; A.S.A. 1947, § 2-204; Acts 1989, No. 280, § 2; 1991, No. 42, § 2; 1997, No. 646, § 5; 2001, No. 790, § 1; 2005, No. 67, § 24.

**Publisher's Notes.** This section, inso-

far as it related to municipalities, was superseded by Acts 1913, No. 135 which was subsequently superseded by Ark. Const., Amend. 7.

Ark. Const. Amend. 7 repealed Acts 1911 (Ex. Sess.), No. 2 to the extent of any conflict therewith.

## CASE NOTES

### ANALYSIS

Construction with Amendment 7.  
Identification of Act.

#### Construction with Amendment 7.

The provisions of this section as to the form of the petition were not repealed by Ark. Const. Amend. 7. *Washburn v. Hall*, 225 Ark. 868, 286 S.W.2d 494 (1956).

#### Identification of Act.

Identifying the subject act in a referendum petition by the date on which it

became a law without the governor's signature rather than by the effective date specified in the act was not clearly erroneous, but, even if it were, such error could not be misleading when an exact copy of the act appeared on the petition. *Fletcher v. Bryant*, 243 Ark. 864, 422 S.W.2d 698 (1968).

## 7-9-106. Required attachments to petitions.

(a) To every petition for the initiative shall be attached a full and correct copy of the title and the measure proposed.

(b) To every petition for the referendum shall be attached a full and correct copy of the measure on which the referendum is ordered.



**History.** Acts 1911 (Ex. Sess.), No. 2, § 7; C. & M. Dig., § 9768; Pope's Dig., § 13288; A.S.A. 1947, § 2-205.

**Publisher's Notes.** Ark. Const.,

Amend. 7 repealed Acts 1911 (Ex. Sess.), No. 2 to the extent of any conflict therewith.

## CASE NOTES

### ANALYSIS

In General.  
Changes to Text.  
Clerical Error.  
Procedure.

#### In General.

This section is jurisdictional and mandatory. *Townsend v. McDonald*, 184 Ark. 273, 42 S.W.2d 410 (1931).

#### Changes to Text.

A ballot title need not be the same version submitted to the Attorney General under § 7-9-107 and subsection (a) of this section where the differences are immaterial, such as deletion of an unnumbered, parenthetical aside in the nature of an editorial comment which does not legislate or affect the proposed measure one way or the other. *Porter v. McCuen*, 310 Ark. 562, 839 S.W.2d 512 (1992).

#### Clerical Error.

A clerical error in the number and date of approval of an act could not have been misleading in a referendum petition

where an otherwise exact copy of the act appeared in the petition. *Westbrook v. McDonald*, 184 Ark. 740, 43 S.W.2d 356 (1931).

#### Procedure.

Under this section it is necessary that a full and correct copy of a referred measure be attached to each referendum petition, but it is not necessary that it be attached to each sheet of a petition. *Townsend v. McDonald*, 184 Ark. 273, 42 S.W.2d 410 (1931).

Where the city did not have a local ordinance in place on the subject of attachment of the measure to the referendum petition, the clerk had to look to the statute for guidance; the purpose of attaching a copy of the measure to the petition was to inform the voter of what he or she was signing, regardless of whether the measure was a statewide act or a local ordinance, and asking the voters to sign a petition without an attached copy of the ordinance would defeat the purpose of the statute. *Kyzar v. City of W. Memphis*, 360 Ark. 454, 201 S.W.3d 923 (2005).

## 7-9-107. Approval of ballot titles and popular names of petitions prior to circulation — Publication.

(a) Before any initiative or referendum petition ordering a vote upon any amendment or act shall be circulated for obtaining signatures of petitioners, the sponsors shall submit the original draft to the Attorney General, with a proposed legislative or ballot title and popular name.

(b) Within ten (10) days, the Attorney General shall approve and certify or shall substitute and certify a more suitable and correct ballot title and popular name for each amendment or act. The ballot title so submitted or supplied by the Attorney General shall briefly and concisely state the purpose of the proposed measure.

(c) If, as a result of his or her review of the ballot title and popular name of a proposed initiated act or a proposed amendment to the Arkansas Constitution, the Attorney General determines that the ballot title, or the nature of the issue, is presented in such manner that the ballot title would be misleading or designed in such manner that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself casting a vote for, or,

conversely, that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against, the Attorney General may reject the entire ballot title, popular name, and petition and state his or her reasons therefor and instruct the petitioners to redesign the proposed measure and the ballot title and popular name in a manner that would not be misleading.

(d) If the Attorney General refuses to act or if the sponsors feel aggrieved at his or her acts in such premises, they may, by petition, apply to the Supreme Court for proper relief.

(e)(1)(A) If a sponsor of any proposed statewide initiative elects to submit its popular name and ballot title to the Attorney General for certification prior to September 30 of the year preceding the year in which the initiative would be voted on, then, within ten (10) days of certification by the Attorney General, who shall deliver such certification to the Secretary of State on the day of certification, the Secretary of State shall approve and certify the sufficiency of such popular name and ballot title as certified by the Attorney General and shall cause to be published in a newspaper with statewide circulation the entire proposal with its certified popular name and ballot title and a notice informing the public of such certification and the procedure identified in this section to govern any party who may contest such certification before the Supreme Court.

(B) The procedure shall be as follows:

(i) Any legal action against such certification shall be filed with the Supreme Court within forty-five (45) days of the Secretary of State's publication;

(ii) No such action filed later than forty-five (45) days following publication shall be heard by the Supreme Court; and

(iii) An action timely filed shall be advanced by the Supreme Court as a matter of public interest over all other civil cases except contested election cases and shall be heard and decided expeditiously.

(2) Nothing in this section shall be taken to require any sponsor of a statewide initiative to submit its popular name and ballot title to the Attorney General prior to September 30 of the year preceding the year in which the proposal would be voted on. If the Secretary of State refuses to act as required in this section or if the sponsors feel aggrieved at his or her acts in such premises, they may, by petition, apply to the Supreme Court for proper relief.

(3) Whenever the sponsor of any initiative or referendum petition has obtained final approval of its ballot title and popular name, the sponsor shall file such petition with the Secretary of State prior to obtaining signatures on the petition.

(f) The cost of the initial publication in a newspaper of the text of a statewide initiative and related information as required in subsection (e) of this section shall be paid by the sponsor of the statewide initiative.

**History.** Acts 1943, No. 195, § 4; 1977, No. 208, § 1; A.S.A. 1947, § 2-208; Acts 1989, No. 280, § 3; 1989, No. 912, § 6.

**Publisher's Notes.** Subdivisions

(e)(1)(B)(i) and (ii) were held unconstitutional in *Finn v. McCuen*, 303 Ark. 418, 798 S.W.2d 34 (1990).

## CASE NOTES

### ANALYSIS

Constitutionality.

Purpose.

Applicability.

Action by Attorney General.

Changes to Text.

Contents.

—Sufficiency.

Judicial Review.

Presumptions.

Purposes of Ballot Title or Popular Name.

Time of Approval.

### Constitutionality.

This section in no way curtails the operation of Ark. Const., Amend. 7, but is in aid of that amendment and insures the giving to the signer of the petition as much information as is possible and practicable with regard to what he is being asked to sign. *Washburn v. Hall*, 225 Ark. 868, 286 S.W.2d 494 (1956).

Subdivisions (e)(B)(1)(i) and (ii) are unconstitutional because they purport to permit this court to review a decision of the secretary of state with respect to the ballot title portion of a petition, and the only authority given this court by Ark. Const. Amend. 7 is the authority to review the secretary of state's certification of a "petition" which includes both the ballot title and the signatures. *Finn v. McCuen*, 303 Ark. 418, 798 S.W.2d 34 (1990), overruled in part, *Stilley v. Priest*, 341 Ark. 329, 16 S.W.3d 251 (2000).

### Purpose.

Subsection (b) of this section requires that certified ballot titles be brief and concise; otherwise, voters could well run afoul of former § 7-5-522's five-minute limit in voting booths when prospective voters are waiting in line. *Bailey v. McCuen*, 318 Ark. 277, 884 S.W.2d 938 (Ark. 1994).

### Applicability.

This section relating to ballot titles applies to initiated proposals only. *Chaney v. Bryant*, 259 Ark. 294, 532 S.W.2d 741 (1976).

### Action by Attorney General.

Action of the Attorney General in changing phrases in the popular name and ballot title of a proposed initiated act, where phrases, as originally submitted, amounted to partisan coloring and were clearly calculated to influence voters to support the proposed initiated act, was appropriate. *Jackson v. Clark*, 288 Ark. 192, 703 S.W.2d 454, 730 S.W.2d 454 (1986).

### Changes to Text.

A ballot title need not be the same version submitted to the Attorney General under this section and § 7-9-106(a) where the differences are immaterial, such as deletion of an unnumbered, parenthetical aside in the nature of an editorial comment which does not legislate or affect the proposed measure one way or the other. *Porter v. McCuen*, 310 Ark. 562, 839 S.W.2d 512 (1992).

### Contents.

The ballot title should be complete enough to convey an intelligible idea of the scope and import of the proposed law. It must be free from misleading tendency and contain no partisan coloring. *Westbrook v. McDonald*, 184 Ark. 740, 43 S.W.2d 356 (1931); *Shepard v. McDonald*, 189 Ark. 29, 70 S.W.2d 566 (1934); *Coleman v. Sherrill*, 189 Ark. 843, 75 S.W.2d 248 (1934); *Blocker v. Sewell*, 189 Ark. 924, 75 S.W.2d 658 (1934); *Walton v. McDonald*, 192 Ark. 1155, 97 S.W.2d 81 (1936); *Newton v. Hall*, 196 Ark. 929, 120 S.W.2d 364 (1938); *Washburn v. Hall*, 225 Ark. 868, 286 S.W.2d 494 (1956); *Ferstl v. McCuen*, 296 Ark. 504, 758 S.W.2d 398 (1988).

When the general subject of an initiated act or constitutional amendment is disclosed by the title thereof, no detailed matter need be mentioned. *Newton v. Hall*, 196 Ark. 929, 120 S.W.2d 364 (1938).

It was not necessary that the ballot title to a proposed constitutional amendment providing for the refunding of the state's bonded indebtedness should disclose the creation of a new office therein provided



for. *Newton v. Hall*, 196 Ark. 929, 120 S.W.2d 364 (1938).

A ballot title for a proposed constitutional amendment is sufficient if it identifies the proposed act and fairly recites the general purpose, and it need not be so elaborate as to set forth the details of the act. However, a popular name and a ballot title must be free from catch phrases and slogans which tend to mislead and to color the merit of a proposal on one side or the other. *Becker v. Riviere*, 270 Ark. 219, 604 S.W.2d 555 (1980).

It is difficult to prepare a perfect ballot title; it is sufficient if it informs the voters with such clarity that they can cast their ballot with a fair understanding of the issue presented. *Ferstl v. McCuen*, 296 Ark. 504, 758 S.W.2d 398 (1988).

The ballot title must accurately reflect the general purposes and fundamental provisions of the proposed initiative, so that an elector does not vote for a proposal based on its description in the ballot title, when, in fact, the vote is for a position he might oppose. *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

The ballot title need not recite all of the details of the proposal; however, if the information would give the elector "serious ground for reflection" it is not a mere detail and must be disclosed. *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

The Supreme Court has declared popular names invalid because they were misleading or used biased language. However, because so little is required of a popular name, the court has never held a proposed measure invalid solely because of an incomplete description of the act by the popular name. *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

#### —Sufficiency.

Ballot title held to be defective. *Walton v. McDonald*, 192 Ark. 1155, 97 S.W.2d 81 (1936).

Ballot title held to be sufficient. *McDonald v. Bryant*, 238 Ark. 338, 381 S.W.2d 736 (1964); *Chaney v. Bryant*, 259 Ark. 294, 532 S.W.2d 741 (1976); *Becker v. Riviere*, 270 Ark. 219, 604 S.W.2d 555 (1980); *Jackson v. Clark*, 288 Ark. 192, 703 S.W.2d 454, 730 S.W.2d 454 (1986); *Ferstl v. McCuen*, 296 Ark. 504, 758 S.W.2d 398 (1988); *Gaines v. McCuen*, 296 Ark. 513,

758 S.W.2d 403 (1988); *Porter v. McCuen*, 310 Ark. 562, 839 S.W.2d 512 (1992).

Popular name held not to be misleading. *McDonald v. Bryant*, 238 Ark. 338, 381 S.W.2d 736 (1964); *Mason v. Jernigan*, 260 Ark. 385, 540 S.W.2d 851 (1976).

Popular name held to be sufficient. *Becker v. Riviere*, 270 Ark. 219, 604 S.W.2d 555 (1980); *Ferstl v. McCuen*, 296 Ark. 504, 758 S.W.2d 398 (1988); *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

It is not necessary to spell out every aspect of an initiative in the ballot title. *Porter v. McCuen*, 310 Ark. 562, 839 S.W.2d 512 (1992).

#### Judicial Review.

It is the duty of the Supreme Court in reviewing initiated proposed constitutional amendments to see that ballot titles and popular names are (1) intelligible, (2) honest, and (3) impartial. *Arkansas Women's Political Caucus v. Riviere*, 283 Ark. 463, 677 S.W.2d 846 (1984); *Ferstl v. McCuen*, 296 Ark. 504, 758 S.W.2d 398 (1988); *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

Whether the Attorney General has correctly determined the sufficiency of the popular name and ballot title is a matter of law to be decided by the Supreme Court. It is not at all comparable to a finding of fact by a trial court, which the court will set aside only if it is clearly erroneous. *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

In determining the sufficiency of a ballot title, the Supreme Court will give a liberal construction and interpretation of the requirements of Ark. Const. Amend. 7 in order to secure its purposes to reserve to the people the right to adopt, reject, approve, or disapprove legislation. *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

#### Presumptions.

There is a clear implication that the general assembly intended that presumptions as to sufficiency of a ballot title approved by the Attorney General favor the sponsors of a referendum petition inasmuch as this section provides specifically for relief to them, but not to opponents, by petition to the Supreme Court. *Fletcher v. Bryant*, 243 Ark. 864, 422 S.W.2d 698 (1968).

**Purposes of Ballot Title or Popular Name.**

The popular name actually serves the constitutional requirement of submission in a manner enabling the voters to vote on proposed amendments separately and it is a device useful to facilitate voter discussion prior to election, and it need not contain detailed information or include exceptions which might be required of a ballot title. *Chaney v. Bryant*, 259 Ark. 294, 532 S.W.2d 741 (1976).

The purpose of a ballot title is not to interpret the proposed amendment, but rather to present an impartial and accurate summation of its provisions. *Mason v. Jernigan*, 260 Ark. 385, 540 S.W.2d 851 (1976).

The Supreme Court will make a more detailed examination and analysis of the proposed ballot title than it does the popular name. The popular name is designed primarily to identify the proposal, while the ballot title is designed to adequately summarize the provisions of the proposal and be complete enough to convey to the voter an intelligible idea of the scope and import of the proposal. *Ferstl v. McCuen*, 296 Ark. 504, 758 S.W.2d 398 (1988).

The popular name is designed to make it easy for voters to discuss the proposal prior to the election by giving them a label to identify it. *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988).

**Time of Approval.**

It was the intention of the framers of this section that the Attorney General should pass on the sufficiency of the ballot title and the popular name before the petition is circulated and petition for referendum could not be amended by getting the Attorney General's approval of popular name and ballot title after the circulation of the petition. *Washburn v. Hall*, 225 Ark. 868, 286 S.W.2d 494 (1956).

Where popular name and ballot title of act upon which referendum was proposed were not submitted to Attorney General at the time that petition for referendum was submitted and approved, the Secretary of State properly refused to certify the petition to election officials. *Washburn v. Hall*, 225 Ark. 868, 286 S.W.2d 494 (1956).

**Cited:** *Pafford v. Hall*, 217 Ark. 734, 233 S.W.2d 72 (1950); *Scott v. McCuen*, 289 Ark. 41, 709 S.W.2d 77 (1986).

**7-9-108. Procedure for circulation of petition.**

(a) Each initiative or referendum petition ordering a vote upon a measure having general application throughout the state shall be prepared and circulated in fifteen (15) or more parts or counterparts, and each shall be an exact copy or counterpart of all other such parts upon which signatures of petitioners are to be solicited. When a sufficient number of parts are signed by a requisite number of qualified electors and are filed and duly certified by the Secretary of State, they shall be treated and considered as one (1) petition.

(b) Each part of any petition shall have attached thereto the affidavit of the person who circulated the petition to the effect that all signatures appearing thereon were made in the presence of the affiant and that to the best of the affiant's knowledge and belief each signature is genuine and that the person so signing is a legal voter.

(c) Preceding every petition, there shall be set out in boldface type, over the signature of the Attorney General, any instructions to canvassers and signers as may appear proper and beneficial informing them of the privileges granted by the Constitution and of the penalties imposed for violations of this act. The instructions on penalties shall be in larger type than the other instructions.

(d) No part of any initiative or referendum petition shall contain signatures of petitioners from more than one (1) county.

**History.** Acts 1943, No. 195, § 3; A.S.A. § 7-9-102. **Meaning of “this act”.** See note to 1947, § 2-206; Acts 1991, No. 719, § 2.

RESEARCH REFERENCES

**ALR.** Validity, Construction, and Application of State Statutes Regulating or Proscribing Payment in Connection with Gathering Signatures on Nominating Petitions for Public Office or Initiative Petitions. 40 A.L.R.6th 317.

CASE NOTES

**Cited:** Pafford v. Hall, 217 Ark. 734, 233 S.W.2d 72 (1950); Porter v. McCuen, 310 Ark. 674, 839 S.W.2d 521 (1992).

7-9-109. Form of verification — Penalty for false statement.

(a) Each petition containing the signatures shall be verified in substantially the following form, by the person who circulated the sheet of the petition by his or her affidavit thereon as a part thereof:

“State of Arkansas )  
County of \_\_\_\_\_ )

I, \_\_\_\_\_, being first duly sworn, state that the foregoing persons signed this sheet of the foregoing petition, and each of them signed his or her name thereunto in my presence. I believe that each has stated his or her name, date of birth, residence or town of residence correctly, and that each signer is a legal voter of the State of Arkansas, \_\_\_\_\_ County, or City or Incorporated Town of \_\_\_\_\_.

Signature \_\_\_\_\_  
Residence \_\_\_\_\_

Subscribed and sworn to before me this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Signature \_\_\_\_\_

Clerk, Notary, Judge or J.P.

Residence \_\_\_\_\_”

(b) Forms herein given are not mandatory, and if substantially followed in any petition it shall be sufficient, disregarding clerical and merely technical errors.

(c)(1) Petitions shall not be disqualified due to clerical or technical errors made by a clerk, notary, judge, or justice of the peace when verifying the canvasser’s signature.

(2) Petitions shall not be disqualified for failure of a clerk, notary, judge, or justice of the peace to sign exactly as his or her name appears on his or her seal if the signature of a clerk, notary, judge, or justice of the peace is sufficient to verify his or her name.

(d) A canvasser who knowingly makes a false statement on a petition verification form required by this section shall be deemed guilty of a Class D felony.



**History.** Acts 1911 (Ex. Sess.), No. 2, § 8; C. & M. Dig., § 9769; Pope's Dig., § 13289; A.S.A. 1947, § 2-207; Acts 1989, No. 280, § 4; 1991, No. 42, § 3; 1991, No. 197, § 1; 1997, No. 646, § 6; 2005, No. 1817, § 1.

**Publisher's Notes.** Subsection (b) of this section may also apply to §§ 7-9-104 and 7-9-105 as well as to this section.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Affidavit to Petition.  
False Affidavit.  
Signing Another's Name.

#### Constitutionality.

The last sentence of this section was not repealed by constitutional amendment authorizing initiative and referendum. *Hargis v. Hall*, 196 Ark. 878, 120 S.W.2d 335 (1938).

#### Affidavit to Petition.

Although the statutory form under prior law for affidavits to referendum petitions directed that the names of signers be included in the affidavits, an affidavit on the back of the petition to the effect that the signers on the opposite side were legal voters was sufficient. *Terral v. Arkansas Light & Power Co.*, 137 Ark. 523, 210 S.W. 139 (1919).

Trial judge properly set aside a county

clerk's certification of initiative petitions and properly instructed an election commission to remove the issue from the ballot because 85% of the petitions signed by a canvasser were a nullity; by their own admission, the canvasser and a notary did not follow the required procedures. *Save Energy Reap Taxes v. Shaw*, 374 Ark. 428, 288 S.W.3d 601 (2008).

#### False Affidavit.

A petition verified by affidavits shown to be false is treated as having no affidavits, since the false affidavit is no affidavit. *Sturdy v. Hall*, 201 Ark. 38, 143 S.W.2d 547 (1940).

#### Signing Another's Name.

The last sentence of the section does not authorize a person to sign another's name to a petition. *Hargis v. Hall*, 196 Ark. 878, 120 S.W.2d 335 (1938).

**Cited:** *Fletcher v. Bryant*, 243 Ark. 864, 422 S.W.2d 698 (1968); *Porter v. McCuen*, 310 Ark. 674, 839 S.W.2d 521 (1992).

## 7-9-110. Designation of number and popular name.

(a) The Attorney General shall fix and declare the popular name by which each amendment to the Arkansas Constitution and each initiated and referred measure shall be designated.

(b) In all legal notices and publications, proceedings, and publicity affecting any such amendment or measure, the amendment or measure shall be designated by both the number and popular name fixed as provided in subsection (a) of this section.

**History.** Acts 1933, No. 71, §§ 1, 2; Pope's Dig., §§ 1772, 1773; A.S.A. 1947, §§ 2-209, 2-214; Acts 1993, No. 512, § 9; 2009, No. 281, § 1.

**Amendments.** The 2009 amendment deleted (a)(1).

## CASE NOTES

#### Popular Name.

The popular name actually serves the constitutional requirement of submission in a manner enabling the voters to vote on

proposed amendments separately and it is a device useful to facilitate voter discussion prior to election, and it need not contain detailed information or include

exceptions which might be required of a ballot title. *Chaney v. Bryant*, 259 Ark. 294, 532 S.W.2d 741 (1976).

### **7-9-111. Determination of sufficiency of petition — Corrections.**

(a)(1) The Secretary of State shall ascertain and declare the sufficiency or insufficiency of each initiative and referendum petition within thirty (30) days after it is filed.

(2) The Secretary of State may contract with the various county clerks for their assistance in verifying the signatures on petitions. The county clerk shall return the petitions to the Secretary of State within ten (10) days.

(b) In considering the sufficiency of initiative and referendum petitions, if it is made to appear beyond a reasonable doubt that twenty percent (20%) or more of the signatures on any one (1) part thereof are fictitious, forged, or otherwise clouded or that the challenged petitioners were ineligible to sign the petition, which fact was known or could have been ascertained by the exercise of reasonable diligence on the part of the canvasser, then the Secretary of State shall require the sponsors to assume the burden of proving that all other signatures appearing on the part are genuine and that the signers are qualified electors and are in all other respects entitled to sign the petition. If the sponsors refuse or fail to assume and meet the burden, then the Secretary of State shall reject the part and shall not count as petitioners any of the names appearing thereon.

(c) If the petition is found to be sufficient, the Secretary of State shall certify and record the finding and do and perform such other duties relating thereto as are required by law.

(d)(1) If the petition is found to be insufficient, the Secretary of State shall forthwith notify the sponsors in writing, through their designated agent, and shall set forth his or her reasons for so finding. When the notice is delivered, the sponsors shall have thirty (30) days in which to do any or all of the following:

(A) Solicit and obtain additional signatures;

(B) Submit proof to show that the rejected signatures or some of them are good and should be counted; or

(C) Make the petition more definite and certain.

(2) Any amendments and corrections shall not materially change the purpose and effect of the petition. No change shall be made in the measure, except to correct apparent typographical errors or omissions.

(e)(1) To assist the Secretary of State in ascertaining the sufficiency or insufficiency of each initiative and referendum petition, all county clerks shall furnish at cost to the Secretary of State a single alphabetical list of all registered voters in their respective counties. The list shall be provided at least four (4) months before the election, and an updated list shall be provided at cost by September 1 in the year of the election. The list shall include the date of birth of each registered voter.

(2) The State Board of Election Commissioners, upon the request of the county clerk, may grant a waiver from this provision if the state

board determines that the county clerk is unable to provide the list within the time required.

(f) A person filing initiative or referendum petitions with the Secretary of State shall bundle the petitions by county and shall file an affidavit stating the number of petitions and the total number of signatures being filed.

(g) All county initiative and referendum elections shall be held in accordance with the provisions of § 14-14-917.

(h) Municipal referendum petition measures shall be submitted to the electors at a regular general election unless the petition expressly calls for a special election. If the date set by the petition does not allow sufficient time to comply with election procedures, then the city or town council shall fix the date for any special election on the referendum measure. The date of any special election shall be set in accordance with § 7-11-201 et seq. but in no event more than one hundred twenty (120) calendar days after the date of certification of sufficiency by the municipal clerk.

**History.** Acts 1943, No. 195, § 5; A.S.A. 1947, § 2-210; Acts 1989, No. 280, § 5; 1991, No. 1094, § 1; 1991, No. 1153, § 1; 1997, No. 646, § 7; 1997, No. 1145, § 1; 2005, No. 2145, § 15; 2007, No. 1049, § 30; 2009, No. 1480, § 46.

**Publisher's Notes.** As to applicability

of 1989 legislation, see Publisher's Notes, § 7-9-104.

**Amendments.** The 2007 amendment rewrote (h).

The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in the last sentence of (h).

## CASE NOTES

### ANALYSIS

Construction.

Purpose.

Extension for Securing Additional Signatures.

Unqualified Signers.

### Construction.

The provisions of elections laws are mandatory if enforcement is sought before the election and directory if not raised until after the election. *Donn v. McCuen*, 303 Ark. 415, 797 S.W.2d 455 (1990).

### Purpose.

The statutory requirements for qualifying as candidates are designed so that other pertinent election procedures can be timely met. *Donn v. McCuen*, 303 Ark. 415, 797 S.W.2d 455 (1990).

### Extension for Securing Additional Signatures.

A petition proposing a constitutional amendment must prima facie contain a sufficient number of signatures, and the

30-day period allowed in this section for securing additional names did not permit the filing of a petition which, on its face, had far less than the required number of signatures. *Dixon v. Hall*, 210 Ark. 891, 198 S.W.2d 1002 (1946).

Secretary of State was authorized to allow 30 days' extension for securing signatures where required signatures were obtained, but investigation showed some signatures were not valid. *Ellis v. Hall*, 219 Ark. 869, 245 S.W.2d 223 (1952).

### Unqualified Signers.

In an action attacking the sufficiency of a petition to initiate a constitutional amendment prohibiting pari-mutuel betting, it was not basis for annulling an entire initiative petition counterpart that a fifth of the signers were not qualified electors as this section applies to the secretary of state alone and contemplates flagrant defects that should have been known to the canvasser. *Bragg v. Hall*, 226 Ark. 906, 294 S.W.2d 763 (1956).

**Cited:** Citizens to Establish a Reform



Party v. Priest, 970 F. Supp. 690 (E.D. Ark. 1996).

### **7-9-112. Failure to act on petition — Mandamus — Injunction.**

(a) If the Secretary of State shall fail or refuse to examine and file any initiative or referendum petition within the time prescribed in § 7-9-111, any twenty-five (25) qualified electors who feel aggrieved thereby may, within fifteen (15) days thereafter, apply to the Supreme Court for a writ of mandamus to compel the officer to certify the sufficiency of the petition.

(b) If the Supreme Court shall decide that the petition is legally sufficient, it shall order the Secretary of State to file and certify the sufficiency thereof as of the date upon which it was first offered for filing, and a certified copy of the judgment shall be attached to the petition.

(c) On a proper showing that any petition is not sufficient, the Supreme Court may enjoin the Secretary of State from certifying its sufficiency and may also enjoin the various election boards from allowing the ballot title thereof to be printed on the ballots and certifying votes cast on the proposal.

**History.** Acts 1943, No. 195, § 6; A.S.A. 1947, § 2-211.

### **CASE NOTES**

#### **ANALYSIS**

Construction.  
Purpose.  
Mandamus.

#### **Construction.**

The provisions of elections laws are mandatory if enforcement is sought before the election and directory if not raised until after the election. *Donn v. McCuen*, 303 Ark. 415, 797 S.W.2d 455 (1990).

#### **Purpose.**

The statutory requirements for qualifying as candidates are designed so that other pertinent election procedures can be

timely met. *Donn v. McCuen*, 303 Ark. 415, 797 S.W.2d 455 (1990).

#### **Mandamus.**

Upon a petition for mandamus to compel the Secretary of State to file and certify a proposed law to be voted on under Ark. Const., Amend. 7, it is the duty of the court to inquire whether the proposed measure falls within the terms of the amendment, and if it does, to compel its submission to the people and otherwise to restrain its submission to the people. *Hodges v. Dawdy*, 104 Ark. 583, 149 S.W. 656 (1912).

**Cited:** *Becker v. Riviere*, 270 Ark. 219, 604 S.W.2d 555 (1980).

### **7-9-113. Publication of notice.**

(a) The Secretary of State shall be charged with the duty of letting contracts for publishing notices as authorized in this section.

(b)(1) Before the election at which any proposed or referred measure is to be voted upon by the people, notice shall be published in two (2) weekly issues of some newspaper in each county as is provided by law.

(2)(A) Publication of the notice for amendments proposed by the General Assembly shall commence six (6) months before the election.

(B) Publication of the notice for all other measures shall commence eight (8) weeks before the election.

(c) At least one (1) notice shall contain the number, the popular name, the ballot title, and a complete text of the measure to be submitted and shall be published in a camera-ready format in a type no smaller than ten-point type.

(d) It shall be the duty of the Secretary of State, in connection with a copy of the proposed amendment, to give notice in the same newspapers that each elector on depositing his or her ballot at the election shall vote for or against the amendment.

**History.** Acts 1879, No. 80, § 6, p. 128; C. & M. Dig., § 1473; Pope's Dig., § 1771; Acts 1943, No. 195, § 7; A.S.A. 1947, §§ 2-212, 2-213; Acts 1991, No. 798, § 1; 1991, No. 1094, § 2; 1991, No. 1153, § 2; 1997, No. 646, § 8.

**Cross References.** Constitutional amendments and other questions to be posted before election, § 7-5-206.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Niswanger, A. Practitioner's Guide to Challenging and Defending Legislatively Proposed Consti-

tutional Amendments in Arkansas, 17 U. Ark. Little Rock L.J. 765.

## CASE NOTES

### ANALYSIS

Initiated Amendments.  
Substantial Compliance.  
Time of Text Publication.

#### Initiated Amendments.

Former law prescribing the time of publication of initiated amendments to the constitution, enacted under the authority of the initiative and referendum amendment to the constitution, governed the publication of such measures, superseding Ark. Const., Art. 19, § 22 in that respect. *Grant v. Hardage*, 106 Ark. 506, 153 S.W. 826 (1913) (decision under prior law).

#### Substantial Compliance.

Where the Secretary of State failed to publish or certify ballot title as written by the legislature, and plaintiffs failed to apply for a writ of mandamus when the

mistaken publication was made, requiring the Secretary to correct his error, and waited instead until the eleventh hour and asked the trial court to strike the matter from the ballot, trial court correctly declined to strike the matter where the Secretary of State had still substantially complied with the applicable statutes and there was no hint that his mistake had caused any real prejudice to either side of the issue. *Becker v. McCuen*, 303 Ark. 482, 798 S.W.2d 71 (1990).

#### Time of Text Publication.

The full text of an amendment referred to the electors in accordance with Ark. Const., Art. 19, § 22, must be published six months prior to the general election to which it is subject. *Walmsley v. McCuen*, 318 Ark. 269, 885 S.W.2d 10 (1994).

**Cited:** *Chaney v. Bryant*, 259 Ark. 294, 532 S.W.2d 741 (1976).

**7-9-114. Abstract of proposed measure.**

(a) The Attorney General shall prepare a concise abstract of the contents of each statewide initiative and referendum measure proposed under Arkansas Constitution, Amendment 7, and he or she shall transmit it to the Secretary of State not less than twenty (20) days before the election.

(b) Not fewer than eighteen (18) days before the election, the Secretary of State shall transmit a certified copy of the abstract to the county boards of election commissioners, who shall cause copies to be printed and posted conspicuously at all polling places in the county for the information of the voters.

(c) The cost of printing copies of the abstracts shall be borne by the counties as a regular expense of the election.

**History.** Acts 1959, No. 47, §§ 1-3;  
A.S.A. 1947, §§ 2-225 — 2-227.

**7-9-115. Furnishing ballot title and popular name to election commissioners.**

Not less than eighteen (18) days before the election, the Secretary of State shall furnish the State Board of Election Commissioners and county boards of election commissioners a certified copy of the ballot title and popular name for each proposed measure and each referred act to be voted upon at the ensuing election.

**History.** Acts 1943, No. 195, §§ 8, 9;  
A.S.A. 1947, §§ 2-216, 2-217; Acts 1997,  
No. 646, § 9.

**CASE NOTES****ANALYSIS**

Approval of Ballot Title.  
Substantial Compliance.

**Approval of Ballot Title.**

It is the court's duty to approve a ballot title if it represents an impartial summary of the measure and contains enough information to enable the voters to mark their ballots with a fair understanding of the issues presented. *Becker v. Riviere*, 270 Ark. 219, 604 S.W.2d 555 (1980).

**Substantial Compliance.**

Where the Secretary of State failed to publish or certify ballot title as written by

the legislature, and plaintiffs failed to apply for a writ of mandamus when the mistaken publication was made, requiring the Secretary to correct his error, and waited instead until the eleventh hour and asked the trial court to strike the matter from the ballot, trial court correctly declined to strike the matter where the Secretary had still substantially complied with the applicable statutes and there was no hint that his mistake had caused any real prejudice to either side of the issue. *Becker v. McCuen*, 303 Ark. 482, 798 S.W.2d 71 (1990).

**Cited:** *Chaney v. Bryant*, 259 Ark. 294, 532 S.W.2d 741 (1976).



**7-9-116. Captions and designations of numbered issues.**

(a) The Secretary of State shall fix and declare the number of the issue by which state measures shall be designated on the ballot.

(b) Each state measure shall be identified with the issue number designated by the Secretary of State.

(c) Measures proposed by initiative petition shall be captioned, "CONSTITUTIONAL AMENDMENT (OR ACT) PROPOSED BY PETITION OF THE PEOPLE".

(d) Measures referred to a vote by petition shall be captioned, "MEASURE REFERRED BY ORDER OF THE PEOPLE".

(e) Measures referred to a vote by the General Assembly shall be captioned, "CONSTITUTIONAL AMENDMENT (OR OTHER MEASURE) REFERRED TO THE PEOPLE BY THE GENERAL ASSEMBLY".

**History.** Acts 1943, No. 195, § 8; A.S.A. 1947, § 2-216; Acts 2009, No. 281, § 2.

**Amendments.** The 2009 amendment inserted (a) and (b) and redesignated the remaining subsections accordingly in-

serted "CONSTITUTIONAL AMENDMENT (OR ACT)" in (c); inserted "MEASURE" in (d); and inserted "CONSTITUTIONAL AMENDMENT (OR OTHER MEASURE)" in (e).

**CASE NOTES**

**Cited:** Chaney v. Bryant, 259 Ark. 294, 532 S.W.2d 741 (1976).

**7-9-117. Ballot form.**

(a) It shall be the duty of the county board of election commissioners in each county to cause each title and popular name to be printed upon the official ballot to be used in the election at which the measure is to be voted upon, in the manner certified by the Secretary of State.

(b) The title and popular name shall be stated plainly, followed by these words:

"FOR ISSUE NO.....

"AGAINST ISSUE NO....."

(c)(1) In arranging the ballot titles on the ballot, the county board shall place each measure separate and apart from others.

(2) Each statewide measure shall be designated on the ballot as an issue, and the issues shall be numbered consecutively beginning with "Issue 1" and in the following order:

(A) Constitutional amendments proposed by the General Assembly, if any;

(B) Initiated constitutional amendments, if any;

(C) Statewide initiated acts, if any;

(D) Referred acts of the General Assembly, if any;

(E) Questions referred by the General Assembly, if any; and

(F) Other measures that may be referred, if any.

(3) The ballot titles of measures submitted by municipalities, counties, and other political subdivisions that may submit ballot measures to the people shall be:

(A) Placed separate and apart on the ballot from the ballot titles of statewide measures and from other ballot titles of measures submitted by municipalities, counties, and other political subdivisions; and

(B) Numbered consecutively for each political subdivision in the following order:

- (i) Initiated local measures, if any;
- (ii) Referred local measures, if any; and
- (iii) Other measures that may be referred, if any.

**History.** Acts 1943, No. 195, §§ 8, 9; A.S.A. 1947, §§ 2-216, 2-217; Acts 2009, No. 281, § 3.

**Amendments.** The 2009 amendment deleted “order and” preceding “manner” in (a); in (b), substituted “FOR ISSUE NO .....” for “FOR PROPOSED INITIATIVE

(OR REFERRED) AMENDMENT (OR ACT) NO .....” and substituted “AGAINST ISSUE NO .....” for “AGAINST PROPOSED INITIATIVE (OR REFERRED) AMENDMENT (OR ACT) NO .....”; and inserted (c)(2) and (3).

#### CASE NOTES

**Cited:** Chaney v. Bryant, 259 Ark. 294, 532 S.W.2d 741 (1976).

#### 7-9-118. Failure to place proposal on ballot — Manner of voting.

If any election board shall fail or refuse to submit any proposal after its sufficiency has been duly certified, the qualified electors of the county may vote for or against the measure by writing or stamping on their ballot the proposed ballot title, followed by the word “FOR” or “AGAINST”. All votes so cast, if otherwise legal, shall be canvassed, counted, and certified.

**History.** Acts 1943, No. 195, § 9; A.S.A. 1947, § 2-217.

#### 7-9-119. Counting, canvass, and return of votes — Proclamation of result — Effective date.

(a) The vote on each measure shall be counted, tabulated, and returned by the proper precinct election officials to the county board of election commissioners in each county at the time and in the manner the vote for candidates for state and county officers is tabulated, canvassed, and returned.

(b) An abstract of all votes cast on any measure shall be certified by the county board and delivered or postmarked to the Secretary of State no earlier than forty-eight (48) hours and no later than fifteen (15) calendar days after the election is held.

(c) It shall be the duty of the Secretary of State to canvass the returns on each measure not later than ten (10) days thereafter and to

certify the result to the Governor and to the State Board of Election Commissioners.

(d)(1)(A) The Governor shall thereupon issue a proclamation showing the total number of votes cast and the number cast for and the number cast against each measure and shall declare the measure adopted or rejected, as the facts appear.

(B) If the Governor declares any measure adopted, it shall be in full force and effect thirty (30) days after the election unless otherwise provided in the measure.

(2) However, amendments to the Arkansas Constitution shall also be declared adopted or rejected by the Speaker of the House of Representatives, as is provided by the Arkansas Constitution.

**History.** Acts 1943, No. 195, § 10; A.S.A. 1947, § 2-218; Acts 1997, No. 646, § 10; 2005, No. 1677, § 6.

Measures in effect 30 days after election, Ark. Const., Amend. No. 7.

**Cross References.** Counting of ballots, § 7-5-315.

Returns and canvass of votes, § 7-5-701 et seq.

### **7-9-120. Printing of approved measures with general laws — Certification of city ordinances.**

(a) The Secretary of State shall cause every measure approved by the people to be printed with the general laws enacted by the next ensuing session of the General Assembly with the date of the Governor's proclamation declaring the same to have been approved by the people.

(b) However, city ordinances approved by the people shall only be certified by the Secretary of State to the city clerk or recorder of the municipality for which the ordinance has been approved, who shall immediately record the same as he or she is required by law to record other ordinances of the municipality.

**History.** Acts 1911 (Ex. Sess.), No. 2, § 7; C. & M. Dig., § 9768; Pope's Dig., § 13288; A.S.A. 1947, § 2-205.

### **CASE NOTES**

**Cited:** *Townsend v. McDonald*, 184 Ark. 273, 42 S.W.2d 410 (1931); *Westbrook v. McDonald*, 184 Ark. 740, 43 S.W.2d 356 (1931).

### **7-9-121. Contest of returns and certification.**

(a) The right to contest the returns and certification of the votes cast upon any measure is expressly conferred upon any twenty-five (25) qualified electors of the state.

(b) Any contest may be brought in the Pulaski County Circuit Court and shall be conducted under any rules and regulations as may be made and promulgated by the Supreme Court. However, the complaint shall be filed within sixty (60) days after the certification of the vote thereon, and the contestants shall not be required to make bond for the costs.



**History.** Acts 1943, No. 195, § 11; A.S.A. 1947, § 2-222; Acts 2005, No. 67, § 25.

### CASE NOTES

#### ANALYSIS

Construction.  
Eligibility.  
Estoppel.

#### **Construction.**

An election contest may be generally described as an action to contest the certification of the vote on an issue. *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993).

#### **Eligibility.**

In the proper case a taxpayer may be estopped from questioning the validity of

a tax. *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993).

#### **Estoppel.**

Where the tax itself was at issue, and where the suit to contest was filed within one year after it was publicly known that the principal purpose of the tax had failed, the doctrine of estoppel was not applicable. *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993).

### **7-9-122. Adoption of conflicting measures.**

If two (2) or more conflicting measures shall be approved by a majority of the votes severally cast for and against the measures at the same election, the measure receiving the greatest number of affirmative votes shall become law.

**History.** Acts 1911 (Ex. Sess.), No. 2, § 14; C. & M. Dig., § 9776; Pope's Dig., § 13295; A.S.A. 1947, § 2-221; Acts 1993, No. 512, § 10.

**Publisher's Notes.** Ark. Const., Amend. 7 repealed Acts 1911 (Ex. Sess.), No. 2 to the extent of any conflict therewith.

### **7-9-123. Preservation of records.**

All petitions, notices, certificates, or other documentary evidence of procedural steps taken in submitting any measure shall be filed and preserved. Petitions with signatures shall be retained for two (2) years and thereafter destroyed. The measure and the certificates relating thereto shall be recorded in a permanent record and duly attested by the Secretary of State.

**History.** Acts 1943, No. 195, § 13; A.S.A. 1947, § 2-224; Acts 1997, No. 897, § 1.

### **7-9-124. Voter registration signature imaging system — Creation of fund.**

(a) There is hereby established in the office of the Secretary of State a voter registration signature imaging system, and the Secretary of State is authorized to acquire and maintain the necessary equipment and facilities to accommodate the system.

(b) The Department of Information Systems shall cooperate with and assist the Secretary of State in determining the computer equipment and software needed in the office of the Secretary of State for the voter registration signature imaging system.

(c) There is hereby created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Voter Registration Signature Imaging System Fund".

**History.** Acts 1993, No. 1285, §§ 1-3;  
1997, No. 1104, § 1.

### **7-9-125. Definitions — Prohibition of profit — Penalties — Freedom of information.**

(a) For purposes of this section:

(1) "Act" means an enactment having general application throughout the state or an ordinance applicable to a municipality or county and enacted by legislative authority or by the people;

(2) "Amendment" means any proposed amendment to the Arkansas Constitution, whether proposed under the provisions of Amendment 7 or Article 19, § 22;

(3) "Election" means a general election at which state and county officers are elected for regular terms;

(4) "Initiative petition" means a form of petition which conforms to the requirements of § 7-9-104;

(5) "Measure" means either an amendment or an act;

(6) "Property" means both real and personal property and includes, but is not limited to, both tangible and intangible property;

(7) "Referendum petition" means a form of petition which conforms to the requirements of § 7-9-105; and

(8) "Sponsor" means a person or persons who arrange for the circulation of initiative, referendum, or constitutional amendment petitions or who file an initiative, referendum, or constitutional amendment with the Secretary of State or other authorized recipient of the petitions.

(b)(1) No person who is a sponsor of an initiative petition, referendum petition, or constitutional amendment which proposes the sale of property owned by a municipality or county shall receive anything of value as a result of the passage of the act sponsored by the person.

(2) A sponsor of an initiative petition, referendum petition, or constitutional amendment which proposes the sale of property owned by a municipality or county shall file, within sixty (60) calendar days of the election at which the initiative, referendum, or constitutional amendment has been voted upon, with the Secretary of State an accounting of all expenditures by the sponsor in connection with the petition or amendment.

(3) No person shall directly or indirectly benefit from sponsorship of a petition or amendment which proposes the sale of property owned by a municipality or county by contracting sponsorship activities to any business enterprise in which the sponsor has a substantial interest.

(4) Nothing in this act shall prohibit the circulation of petitions or compensation to persons who circulate the petitions.

(c)(1)(A) If a sponsor violates any provision of subsection (b) of this section, the sponsor shall be fined an amount equal to twice the amount of the person's personal gain.

(B) The fine shall be paid to the state, municipality, or county in which the petition or amendment was voted upon.

(2) This section shall be enforced by the:

(A) City attorney of the municipality;

(B) Prosecuting attorney of the county; or

(C) Attorney General of this state.

(d) The expense reports filed by the sponsor of the petition shall be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

**History.** Acts 2001, No. 1100, §§ 1-3.

## SUBCHAPTER 2 — LEGISLATIVE PROPOSAL OF CONSTITUTIONAL AMENDMENTS

### SECTION.

7-9-201. Proposal and vote.

7-9-202. Enrollment and filing.

### SECTION.

7-9-203. Entry on journals.

7-9-204. Ballot title.

**Effective Dates.** Acts 1923, No. 279,  
§ 3: Emergency declared.

Acts 1927, No. 206, § 3: effective on  
passage.

## RESEARCH REFERENCES

**Am. Jur.** 16 Am. Jur. 2d, Const. Law,  
§ 38 et seq.

**C.J.S.** 16 C.J.S., Const. Law, § 10 et  
seq.

### 7-9-201. Proposal and vote.

Amendments to the Arkansas Constitution shall be proposed in either branch of the General Assembly in the form of a joint resolution, which shall be read in full on three (3) several days in each house unless the rules be suspended by two-thirds ( $\frac{2}{3}$ ) of each house, when it may be read a second or third time on the same day. On the final passage of the proposed amendment through each house, the vote shall be taken by yeas and nays, and the names of the persons voting for and against it be entered on the journal. No amendment shall be proposed unless it is agreed to by a majority of all the members elected to each house.

**History.** Acts 1879, No. 80, § 1, p. 128;  
C. & M. Dig., § 1467; Pope's Dig., § 1768;  
A.S.A. 1947, § 2-101.

**Cross References.** Constitutional  
amendments proposed by people through  
initiative, § 7-9-101 et seq.



**7-9-202. Enrollment and filing.**

When any joint resolution proposing an amendment to the Arkansas Constitution shall have passed each house as prescribed in § 7-9-201, it shall be enrolled and signed by the President of the Senate and the Speaker of the House of Representatives and filed in the office of the Secretary of State.

**History.** Acts 1879, No. 80, § 2, p. 128; § 1; 1927, No. 206, § 2; Pope's Dig., C. & M. Dig., § 1468; Acts 1923, No. 279, § 1769; A.S.A. 1947, § 2-102.

**7-9-203. Entry on journals.**

The proposed amendment shall be entered on the journals of each house, with the yeas and nays.

**History.** Acts 1879, No. 80, § 5, p. 128; C. & M. Dig., § 1472; Pope's Dig., § 1770; A.S.A. 1947, § 2-103.

**7-9-204. Ballot title.**

The title of the joint resolution proposing an amendment to the Arkansas Constitution shall be the ballot title of the proposed constitutional amendment.

**History.** Acts 2001, No. 150, § 1

**CASE NOTES****At Variance with Ark. Const. Art. 19, § 22.**

In the case of proposed constitutional amendment, now codified as Ark. Const. Amend. 89, this section, was at variance

with Ark. Const. Art. 19, § 22, and violated the Arkansas Constitution. *Forrester v. Martin*, 2011 Ark. 277, — S.W.3d — (2011).

**SUBCHAPTER 3 — CONSTITUTIONAL CONVENTIONS****SECTION.**

- 7-9-301. Calling constitutional convention — Majority vote.
- 7-9-302. Delegate qualifications — Election date.
- 7-9-303. Apportionment of delegates — Vacancies.
- 7-9-304. Nominating petitions.
- 7-9-305. Election and certification of delegates.
- 7-9-306. Organizational meeting — Plenary meeting.

**SECTION.**

- 7-9-307. Meeting procedures.
- 7-9-308. Duration of constitutional convention — Certification of draft constitution — Report.
- 7-9-309. Method of publication.
- 7-9-310. Submission of proposed constitution to electors.
- 7-9-311. Proposal of amendments to present constitution.
- 7-9-312. Expenses.

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**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.

**RESEARCH REFERENCES**

**Am. Jur.** 16 Am. Jur. 2d, Const. Law, § 35 et seq.      **C.J.S.** 16 C.J.S., Const. Law, §§ 8, 9.

**CASE NOTES**

**Cited:** *Riviere v. Wells*, 270 Ark. 206, 604 S.W.2d 560 (1980).

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**7-9-301. Calling constitutional convention — Majority vote.**

(a) When a majority of the qualified electors of this state voting on the issue at a general election shall vote for the holding of a constitutional convention, the convention shall be held. The delegates thereto shall be selected and qualified as provided in this subchapter.

(b) Whenever a majority of the electors voting on the question vote against the holding of a constitutional convention, no convention shall be held. Delegates to the proposed convention elected at the election shall have and exercise no power or authority and shall perform no functions by virtue of their election as delegates.

**History.** Acts 1968 (1st Ex. Sess.), No. 42, §§ 1, 6; A.S.A. 1947, §§ 2-104, 2-109.

**CASE NOTES**

**Cited:** *Garner v. Holland*, 264 Ark. 536, 572 S.W.2d 589 (1978); *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (Ark. 1995).

**7-9-302. Delegate qualifications — Election date.**

(a) At the same general election at which a vote on the calling of a constitutional convention shall be taken, delegates to the convention shall be elected.

(b) Candidates for the office of delegate to the constitutional convention shall possess the qualifications required by law for a member of the House of Representatives of the General Assembly, and they shall be qualified electors of the district from which elected.

(c) The election of delegates to the convention shall be on a nonpartisan basis, and no candidate shall designate political party affiliation at the time he or she files for election.

**History.** Acts 1968 (1st Ex. Sess.), No. 42, § 2; A.S.A. 1947, § 2-105.

## CASE NOTES

## ANALYSIS

Civil Office.

Election Contest.

**Civil Office.**

This subchapter did not create a "civil office" and a state senator could be elected as a delegate. *Harvey v. Ridgeway*, 248 Ark. 35, 450 S.W.2d 281 (1970).

**Election Contest.**

Where candidates to a constitutional convention did not receive adequate notice of drawing for ballot position, but had adequate notice of ballot position prior to the election, the candidates could have applied to courts for relief before election but could not have election voided thereafter. *McFarlin v. Kelly*, 246 Ark. 1237, 442 S.W.2d 183 (1969).

**7-9-303. Apportionment of delegates — Vacancies.**

(a) The basis for representation in any constitutional convention called as a result of an affirmative vote on the calling of a constitutional convention shall be as follows: One hundred (100) members shall be elected from the same districts and on the same basis as members of the House of Representatives of the General Assembly.

(b) Vacancies in positions of delegates shall be filled by appointment by the convention from the same district in which the vacancy occurred.

**History.** Acts 1968 (1st Ex. Sess.), No. 42, § 3; A.S.A. 1947, § 2-106.

**7-9-304. Nominating petitions.**

(a)(1) Every person desiring to be elected as a delegate from a particular House of Representatives district shall file a nominating petition with the Secretary of State containing at least fifty (50) signatures thereon of persons who are qualified electors within the district.

(2) In addition, he or she shall pay a filing fee of twenty-five dollars (\$25.00).

(3) When petitions are filed on behalf of a candidate, they shall contain a statement signed by the candidate and filed along with the petition indicating the candidate's willingness to accept the nomination and to serve as a delegate.

(b) Persons who circulate nominating petitions shall execute an affidavit concerning the genuineness of the signatures in like manner as now required for the circulators of petitions for initiative acts and constitutional amendments.

(c) The petitions shall be filed with the Secretary of State not less than eighty-one (81) days before the next general election, and the Secretary of State shall certify the names of all candidates and the position that each is seeking to the county board of election commissioners of the counties in the respective House of Representatives districts not later than seventy-five (75) days prior to the date of the election. A candidate must designate the position he or she is seeking at the time he or she files his or her nominating petition with the



Secretary of State, and after having designated a position, the candidate is prohibited from changing to a different position.

**History.** Acts 1968 (1st Ex. Sess.), No. 42, § 4; A.S.A. 1947, § 2-107; Acts 2007, No. 1049, § 31; 2011, No. 1185, § 13.

**Amendments.** The 2007 amendment, in (c), substituted “not less than seventy (70) days” for “not less than forty (40) days” and “not later than seventy (70) days” for “not later than thirty (30) days.”

The 2011 amendment, in (c), substituted “eighty-one (81)” for “seventy (70)” and “seventy-five (75)” for “seventy (70).”

**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.

### **7-9-305. Election and certification of delegates.**

(a) The county board of election commissioners shall include on the general election ballots the names of all candidates for delegate to the constitutional convention as certified by the Secretary of State.

(b)(1) The candidate receiving a majority of the votes for a particular position in the general election shall be declared elected as a delegate to the convention.

(2) In the event that more than two (2) candidates are seeking a particular delegate position and that no candidate receives a majority of the votes cast for all candidates for the position, the names of the two (2) candidates receiving the highest number of votes for the position shall be certified to a special runoff election that shall be held by the respective county board of election commissioners of the district three (3) weeks from the day on which the general election is held. The special runoff election shall be conducted in the same manner as is now provided by law, and the election results shall be canvassed and certified in the manner provided by law.

(3) A tie vote for a delegate position in the special runoff election shall be determined by drawing lots in the presence of the circuit court of the county within ten (10) days from the date of the election.

(c) The results of the election of delegates at the general election or at a special runoff election held for delegate positions shall be certified to the Secretary of State along with the other election results as is now provided by law.

**History.** Acts 1968 (1st Ex. Sess.), No. 42, § 5; A.S.A. 1947, § 2-108; Acts 1993, No. 512, § 11; 2007, No. 1020, § 19.

**Amendments.** The 2007 amendment substituted “three (3) weeks” for “two (2) weeks” in (b)(2).

### **7-9-306. Organizational meeting — Plenary meeting.**

(a) Whenever a majority of the electors vote affirmatively to call a constitutional convention, it shall be the duty of the delegates elected as prescribed in § 7-9-305 to assemble at the State Capitol Building at 10:00 a.m. on the first Tuesday after the first Monday in January next after their election for an organizational meeting of no longer than two (2) days’ duration.

(b) This meeting shall be for the purpose of electing permanent convention officers, adopting rules of procedure, and providing for such interim committees and staff members as may be necessary to prepare for the plenary meeting of the convention which shall convene at the State Capitol Building in the House Chamber on the first Monday of the following April.

(c) The Secretary of State shall preside at the organizational meeting until the permanent convention chair is selected, and he or she may vote in case of a tie vote in the selection of a permanent chair.

(d) At the meeting each member shall take an oath to support the Constitution of the United States and to faithfully discharge the duties of a convention delegate.

**History.** Acts 1968 (1st Ex. Sess.), No. 42, §§ 6, 7; A.S.A. 1947, §§ 2-109, 2-110.

### **7-9-307. Meeting procedures.**

(a) A majority of the delegates shall constitute a quorum, and a majority of the total number of delegates shall be required for approval of any section to be included in a proposed constitution or part thereof or in a proposed constitutional amendment.

(b) The constitutional convention shall elect its own officers and shall be sole judges of the qualifications and election of its own membership.

(c) All meetings of the convention shall be open to the public.

**History.** Acts 1968 (1st Ex. Sess.), No. 42, § 7; A.S.A. 1947, § 2-110.

### **7-9-308. Duration of constitutional convention — Certification of draft constitution — Report.**

(a) The constitutional convention shall remain in session as long as is required to transact its business and to meet its responsibilities, but not past the following July 1. If the convention determines that additional time is needed, it may vote to recess until the following August 1 and resume its sessions on that date, but the convention may not extend its sessions past the following September 1, and it must adjourn itself sine die no later than September 1.

(b) Thereafter and not later than September 15 next, the finished draft of the proposed constitution shall be certified by the president and the secretary of the convention to the Secretary of State.

(c) The convention shall also publish a report to the people explaining its proposals.

**History.** Acts 1968 (1st Ex. Sess.), No. 42, § 6; A.S.A. 1947, § 2-109.

**7-9-309. Method of publication.**

(a) Publication of a proposed new constitution by a constitutional convention called by the people of the state at a general election shall be made by one (1) of the following methods, whichever is less costly to the state:

(1) One (1) time at the rate of two and one-half cents ( $2\frac{1}{2}\text{¢}$ ) per word in each legal newspaper in the state by insertion of preprinted copies of the proposed new constitution furnished by the state to each legal newspaper without charge. The copies shall be in tabloid form suitable for insertion in legal newspapers and shall be printed in not less than eight-point type; or

(2) One (1) time without preprint at the rate of five cents ( $5\text{¢}$ ) per word in every legal newspaper in the state.

(b) Publication of the proposed constitution shall take place not less than sixty (60) days prior to the election at which it shall be voted upon by the people of the state.

**History.** Acts 1969, No. 116, § 6; A.S.A. 1947, § 2-114.

**7-9-310. Submission of proposed constitution to electors.**

(a) The constitutional convention may submit a new constitution as one (1) proposal to be voted on by the people, and it may submit proposed parts or alternative parts of a new constitution for separate votes. The proposals of the convention shall be submitted to the electors of this state for adoption or rejection at the general election held next following adjournment sine die of the convention.

(b) The Governor shall issue a proclamation no later than the October 1 preceding the general election. Within ten (10) days after the proclamation by the Governor, the several sheriffs throughout the state shall issue their proclamations notifying the electors of the county that a new constitution will be voted upon at the general election. The returns of the issue at the general election shall be made, canvassed, and the results thereof declared in the same manner as is provided by law for initiative and referendum measures.

(c)(1) If a majority of the electors of the state voting thereon at the general election shall vote for the proposed constitution, it shall become effective on the date and in the manner provided in the proposed constitution, or if no effective date shall be provided in the proposed constitution, it shall become effective as now provided by law with reference to initiated acts and amendments.

(2) If a majority of the electors of the state voting thereon at the general election shall vote against the proposed constitution, it shall be deemed rejected by the electors, and the existing Arkansas Constitution shall continue to be the Arkansas Constitution until changed as provided by law. In the event that proposed parts or alternative parts of the new constitution are submitted for separate vote and that the people shall reject the new constitution, then all proposed parts or



alternative parts for a new constitution voted upon separately shall be deemed rejected, even though the parts received a majority of the votes cast thereon. In no event shall the proposed parts or alternative parts of a new constitution voted upon separately be deemed to amend or change the existing Arkansas Constitution or any of its amendments if the people reject the proposed new constitution. It is the intent hereof that proposed parts or alternative parts of the new constitution upon which votes are cast separate and apart from the new constitution shall be of no force and effect in the event the people reject the proposed new constitution.

**History.** Acts 1968 (1st Ex. Sess.), No. 42, § 9; A.S.A. 1947, § 2-112.

### CASE NOTES

#### ANALYSIS

Application of Election Laws.  
Ballot Form.  
Manner of Submission.

#### **Application of Election Laws.**

Action taken by the chancery court in holding that the ballot form for submission of the proposed constitution of 1980 was void and in directing the secretary of state to certify another form was not a violation of the doctrine of separation of powers, inasmuch as the court did not impose a limitation upon the convention's powers, and inasmuch as the people, in expressing their desire that the convention's proposals be submitted at the general election, implied that the laws governing general elections be applied. *Riviere v. Wells*, 270 Ark. 206, 604 S.W.2d 560 (1980).

#### **Ballot Form.**

Where there was no space provided for an elector to vote to reject the proposed

constitution, the ballot form for submission of the proposed constitution of 1980 was misleading. *Riviere v. Wells*, 270 Ark. 206, 604 S.W.2d 560 (1980).

Since the ballot form at issue was in the for-against format, the ballot form was not misleading. *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (Ark. 1995).

#### **Manner of Submission.**

An act of the General Assembly which provided that the draft of the constitutional convention be submitted to the electorate for approval or rejection, and which prescribed the exact form of the submission of the question to the electorate, was in conformity with the limitation upon the power of the convention that its proposals be submitted for adoption or rejection, or approval or rejection. *Riviere v. Wells*, 270 Ark. 206, 604 S.W.2d 560 (1980).

### **7-9-311. Proposal of amendments to present constitution.**

The constitutional convention, if it shall not propose a new constitution, may propose one (1) or more amendments to the present constitution to be submitted to the voters at the next general election.

**History.** Acts 1968 (1st Ex. Sess.), No. 42, § 10; A.S.A. 1947, § 2-113.

### 7-9-312. Expenses.

(a) The appropriation to defray the expenses of any constitutional convention which may be called after a vote of the people shall be made by the next regular session of the General Assembly convening after an affirmative vote on the calling of a constitutional convention.

(b) The proposed budget for the expenses of the convention shall be prepared by the Governor and promptly submitted to the General Assembly for action thereon.

(c) Delegates to the convention shall be paid at the rate of twenty-five dollars (\$25.00) per diem for each day of attendance at meetings of the convention or its committees, plus their necessary travel expenses.

**History.** Acts 1968 (1st Ex. Sess.), No. 42, § 8; A.S.A. 1947, § 2-111.

### CASE NOTES

**Cited:** Priest v. Polk, 322 Ark. 673, 912 S.W.2d 902 (Ark. 1995).

### SUBCHAPTER 4 — DISCLOSURE FOR MATTERS REFERRED TO VOTERS

#### SECTION.

- 7-9-401. Title.
- 7-9-402. Definitions.
- 7-9-403. Penalty.
- 7-9-404. Filing deadlines.
- 7-9-405. Contributions and expenditures limited.
- 7-9-406. Financial reports — Requirement.
- 7-9-407. Financial report — Information.
- 7-9-408. Financial reports — Verification.
- 7-9-409. Financial reports — Time to file — Late fee.

#### SECTION.

- 7-9-410. Public inspection — Record retention.
- 7-9-411. Enforcement.
- 7-9-412. Reporting the use of state funds to oppose or support a ballot measure.
- 7-9-413. Use of state funds to oppose or support a ballot measure.
- 7-9-414. Applicability of §§ 7-9-412 and 7-9-413.
- 7-9-415. Scope.

**A.C.R.C. Notes.** References to “this subchapter” in §§ 7-9-401 — 7-9-411, may not apply to §§ 7-9-412 — 7-9-415, which were enacted subsequently.

**Effective Dates.** Acts 2001, No. 1839, § 35: Became law without Governor’s signature Apr. 20, 2001. Emergency clause provided: “It is found and determined by the General Assembly that various provisions of the Arkansas Code relating to campaign financing and ethics are vague or otherwise in need of modification; that this act accomplishes those purposes; and that this act should go into effect as soon as possible so that those persons who are subject to the provisions of the various

ethics and campaign finance statutes receive the benefit of the clarifications as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1989, Nos. 261 and 634, § 13: approved Mar. 1, 1989 and Mar. 17, 1989, respectively. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that in order to serve the public interest it is immediately necessary to require disclosure of important matters related to the qualification, passage or defeat of ballot questions and the passage or defeat of legislative questions referred to voters. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1235, § 6: Apr. 20, 1993. Emergency clause provided: "It is hereby

found and determined by the Seventy-Ninth General Assembly of the State of Arkansas that the provisions of this act are necessary to guard against persons who may seek to avoid disclosures required by Arkansas Code 7-9-401, et seq. Therefore, in order to provide such safeguards with respect to any statewide public initiative, referendum, or measure referred to voters by the General Assembly, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### RESEARCH REFERENCES

**Am. Jur.** 16 Am. Jur. 2d, Const. Law, § 42 et seq.

**C.J.S.** 16 C.J.S., Const. Law, §§ 6, 7.

**U. Ark. Little Rock L.J.** DiPippa, The Constitutionality of the Arkansas Ballot

Question Disclosure Act, 12 U. Ark. Little Rock L.J. 481.

Survey, Miscellaneous, 12 U. Ark. Little Rock L.J. 653.

### 7-9-401. Title.

This subchapter shall be known as the "Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters".

**History.** Acts 1989, No. 261, § 1; 1989, No. 634, § 1; 1993, No. 1114, § 1.

### 7-9-402. Definitions.

As used in this subchapter:

(1) "Ballot question" means a question in the form of a statewide, county, municipal, or school district initiative or referendum which is submitted or intended to be submitted to a popular vote at an election, whether or not it qualifies for the ballot;

(2)(A) "Ballot question committee" means any person, located within or outside Arkansas, that receives contributions for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of any ballot question, or any person, other than a public servant, a governmental body expending public funds, or an individual, located within or outside Arkansas, that makes expenditures for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of any ballot question.

(B) A person other than an individual or an approved political action committee as defined in § 7-6-201, located within or outside



Arkansas, also qualifies as a ballot question committee if two percent (2%) or more of its annual revenues, operating expenses, or funds are used to make a contribution or contributions to another ballot question committee and if the contribution or contributions exceed ten thousand dollars (\$10,000) in value;

(3)(A) "Contribution" means, whether direct or indirect, advances, deposits, transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payment for services, dues, advancements, forbearance, loans, pledges, or promises of money or anything of value, whether or not legally enforceable, to a person for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question.

(B) "Contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events, and the granting of discounts or rebates by television and radio stations and newspapers, not extended on an equal basis to all persons seeking to expressly advocate the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question.

(C) "Contribution" shall not include noncompensated, nonreimbursed volunteer personal services or travel;

(4) "Contribution and expenditure" shall not include activities designed solely to encourage individuals to register to vote or to vote, or any communication by a bona fide church or religious denomination to its own members or adherents for the sole purpose of protecting the right to practice the religious tenets of the church or religious denomination, and "expenditure" shall not include one made for communication by a person strictly with the person's paid members or shareholders;

(5) "Disqualification of a ballot question" means any action or process, legal or otherwise, which seeks to prevent a ballot question from being on the ballot at an election;

(6) "Expenditure" means a purchase, payment, distribution, gift, loan, or advance of money or anything of value, and a contract, promise, or agreement to make an expenditure, for goods, services, materials, or facilities for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question;

(7) "Legislative question" means a question in the form of a measure referred by the General Assembly, a quorum court, a municipality, or a school district to a popular vote at an election;

(8)(A) "Legislative question committee" means any person, located within or outside Arkansas, that receives contributions for the purpose of expressly advocating the passage or defeat of any legislative question or any person, other than a public servant, a governmental body expending public funds, or an individual, located within or outside Arkansas, that makes expenditures for the purpose of

expressly advocating the passage or defeat of any legislative question.

(B) A person other than an individual or an approved political action committee as defined in § 7-6-201, located within or outside Arkansas, also qualifies as a legislative question committee if two percent (2%) or more of its annual revenues, operating expenses, or funds are used to make a contribution or contributions to another legislative question committee and if the contribution or contributions exceed ten thousand dollars (\$10,000) in value;

(9)(A) "Person" means any individual, business, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting in concert.

(B) "Person" includes a public servant or governmental body using public funds to expressly advocate the qualification, disqualification, passage, or defeat of any ballot question or the passage or defeat of any legislative question; and

(10) "Qualification of a ballot question" means any action or process, legal or otherwise, through which a ballot question obtains certification to be on the ballot at an election.

**History.** Acts 1989, No. 261, § 2; 1989, No. 634, § 2; 1993, No. 1114, § 2; 1993, No. 1235, §§ 1, 2; 2001, No. 1839, § 17; 2003, No. 195, § 8; 2005, No. 1765, § 1; 2009, No. 473, §§ 10, 11; 2011, No. 721, § 13.

**Amendments.** The 2009 amendment added the subdivision designations in (2)

and (8); inserted "or an approved political action committee as defined in § 7-6-201" in (2)(B) and (8)(B), and made minor stylistic changes.

The 2011 amendment inserted "a public servant, a governmental body expending public funds, or" in (2)(A) and (8)(A).

### 7-9-403. Penalty.

Upon conviction, any person who knowingly fails to comply with any of the provisions of this subchapter shall be fined an amount not to exceed one thousand dollars (\$1,000) or be imprisoned for not more than one (1) year, or both.

**History.** Acts 1989, No. 261, § 3; 1989, No. 634, § 3.

### 7-9-404. Filing deadlines.

(a)(1)(A) A ballot question committee or a legislative question committee shall file a statement of organization with the Arkansas Ethics Commission within five (5) days of receiving contributions or making expenditures in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question.

(B) The commission shall maintain the statement of organization until notified of the committee's dissolution.

(2) A ballot question committee or legislative question committee failing to file a statement of organization required by this section shall be subject to a late filing fee not exceeding fifty dollars (\$50.00) for each day the statement remains not filed.

(b) The statement of organization shall include the following information:

(1) The name, the street address, and where available, the telephone number of the committee. A committee address and telephone number may be that of the residence of an officer or a director of the committee;

(2) The name, street address, and where available, the telephone number of the treasurer and other principal officers and directors of the committee;

(3) The name and address of each financial institution in which the committee deposits money or anything else of monetary value;

(4) The name of each person who is a member of the committee. A person that is not an individual may be listed by its name without also listing its own members, if any; and

(5) A brief statement identifying the substance of each ballot question, the qualification, disqualification, passage, or defeat of which the committee seeks to influence or of each legislative question, the passage or defeat of which the committee seeks to influence, and if known, the date each ballot or legislative question shall be presented to a popular vote at an election.

(c) When any of the information required in a statement of organization is changed, an amendment shall be filed within ten (10) days to reflect the change, except that changes in individual membership may be filed when the next financial report is required. A committee failing to file a change as required shall be subject to a late filing fee not exceeding twenty-five dollars (\$25.00) for each day the change remains not filed.

(d) Upon dissolution, a ballot question committee or a legislative question committee shall so notify the commission in writing. Any remaining funds on hand at the time of dissolution shall be turned over to either:

(1) The Treasurer of State for the benefit of the General Revenue Fund Account of the State Apportionment Fund;

(2) An organized political party as defined in § 7-1-101 or a political party caucus of the General Assembly, the Senate, or House of Representatives;

(3) A nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; or

(4) The contributors to the ballot or legislative question committee.

**History.** Acts 1989, No. 261, § 4; 1989, No. 634, § 4; 1993, No. 1114, § 3; 1999, No. 553, § 24; 2001, No. 1839, § 18; 2005, No. 1284, §§ 9, 10; 2005, No. 1765, § 2; 2007, No. 221, § 13; 2007, No. 1001, § 1.

**Amendments.** The 2007 amendment

by No. 221, in (c), substituted “financial report” for “campaign statement” and “shall be subject to a late filing fee not exceeding ten dollars (\$10.00)” for “shall pay a late filing fee of ten dollars (\$10.00).”



The 2007 amendment by No. 1001 substituted “fifty dollars (\$50)” for “twenty-five dollars (\$25.00)” in (a)(2); and substituted “twenty-five dollars (\$25.00)” for “ten dollars (\$10.00)” in (c).

**U.S. Code.** Section 501(c)(3) of the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 501(c)(3).

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2005 Arkansas General Assembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.

### 7-9-405. Contributions and expenditures limited.

(a) No ballot question committee or legislative question committee shall accept any contribution in cash, meaning currency or coin, that exceeds one hundred dollars (\$100).

(b) No ballot question committee or legislative question committee shall accept any contribution from a prohibited political action committee as defined in § 7-6-201.

(c) No ballot question committee, legislative question committee, or individual shall make an expenditure in cash that exceeds fifty dollars (\$50.00) to influence the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question.

(d) No contributions shall be made, directly or indirectly, by any person in a name other than the name by which the person is identified for legal purposes.

(e)(1) No person shall make an anonymous contribution totaling fifty dollars (\$50.00) or more to a ballot question committee or legislative question committee.

(2) Any such anonymous contribution actually received by any ballot question committee or legislative question committee shall be promptly paid by the recipient to the Arkansas Ethics Commission for deposit into the State Treasury as general revenues.

**History.** Acts 1989, No. 261, § 10; 1989, No. 634, § 10; 1991, No. 786, § 5; 1993, No. 1114, § 4; 2005, No. 1765, § 3; 2007, No. 1001, § 2; 2009, No. 473, § 12.

**Amendments.** The 2007 amendment, in (d)(1), substituted “fifty dollars (\$50.00)” for “twenty-five dollars (\$25.00)”

and added “to a ballot question committee or legislative question committee” at the end.

The 2009 amendment inserted present (b) and redesignated the remaining subsections accordingly.

### 7-9-406. Financial reports — Requirement.

(a) A ballot question committee or legislative question committee that either receives contributions or makes expenditures in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question shall file with the Arkansas Ethics Commission financial reports as required by §§ 7-9-407 — 7-9-409.

(b) An individual person who on his or her own behalf expends in excess of five hundred dollars (\$500), excluding contributions, for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question shall file with the commission financial reports as required by §§ 7-9-407 — 7-9-409.

(c) A public servant or governmental body expending public funds in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question shall file with the commission financial reports as required by §§ 7-9-407 — 7-9-409.

(d) Except as provided in subsection (f) of this section, any report required by this subchapter shall be deemed timely filed if it is:

(1) Hand-delivered to the commission on or before the date due;

(2) Mailed to the commission, properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date due;

(3) Received via facsimile by the commission on or before the date due, provided that the original is received by the commission within ten (10) days of the transmission; or

(4) Received by the commission in a readable electronic format that is approved by the commission.

(e) Whenever a report under this subchapter becomes due on a day that is a Saturday, Sunday, or legal holiday, the report shall be due the next day that is not a Saturday, Sunday, or legal holiday.

(f) A preelection report is timely filed if it is received by the commission no later than seven (7) days prior to the election for which it is filed.

**History.** Acts 1989, No. 261, § 5; 1989, No. 634, § 5; 1993, No. 1114, § 5; 1999, No. 553, § 26; 2001, No. 1839, § 19; 2003, No. 195, § 9; 2005, No. 1765, § 4; 2007, No. 221, § 14.

**Amendments.** The 2007 amendment

substituted “§§ 7-9-407 — 7-9-409” for “§ 7-9-407” in (a), (b) and (c); added “Except as provided in subsection (f) of this section” at the beginning of (d) and made a related change; and added (f).

## **7-9-407. Financial report — Information.**

A financial report of a ballot question committee, a legislative question committee, an individual person, a public servant, or a governmental body, as required by § 7-9-406, shall contain the following information:

(1) The name, address, and telephone number of the committee, individual person, public servant, or governmental body filing the statement;

(2)(A) For a committee:

(i) The total amount of contributions received during the period covered by the financial report;

(ii) The total amount of expenditures made during the period covered by the financial report;

(iii) The cumulative amount of those totals for each ballot question or legislative question;

(iv) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the financial report;

(v) The total amount of contributions received during the period covered by the financial statement from persons who contributed less than fifty dollars (\$50.00), and the cumulative amount of that total for each ballot question or legislative question;

(vi) The total amount of contributions received during the period covered by the financial statement from persons who contributed fifty dollars (\$50.00) or more, and the cumulative amount of that total for each ballot question or legislative question;

(vii) The name and street address of each person who contributed fifty dollars (\$50.00) or more during the period covered by the financial report, together with the amount contributed, the date of receipt, and the cumulative amount contributed by that person for each ballot question or legislative question; and

(viii) The name and address of each person who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals.

(B) For an individual person:

(i) The total amount of expenditures made during the period covered by the financial report; and

(ii) The cumulative amount of that total for each ballot question or legislative question.

(C) For a public servant or governmental body using public funds:

(i) The total amount of expenditures made during the period covered by the financial report; and

(ii) The cumulative amount of that total for each ballot question or legislative question; and

(3) The name and street address of each person to whom expenditures totalling one hundred dollars (\$100) or more were made, together with the date and amount of each separate expenditure to each person during the period covered by the financial report and the purpose of the expenditure.

**History.** Acts 1989, No. 261, § 6; 1989, No. 634, § 6; 1993, No. 1114, § 6; 2001, No. 1839, §§ 20, 21; 2003, No. 195, § 10; 2005, No. 1284, § 11; 2007, No. 1001, § 3.

**Amendments.** The 2007 amendment, in (2)(A), substituted "fifty dollars (\$50.00)" for "one hundred dollars (\$100)" in (v), (vi) and (vii).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2005 Arkansas General As-

sembly, Election Law, 28 U. Ark. Little Rock L. Rev. 351.



**7-9-408. Financial reports — Verification.**

The financial reports identified in § 7-9-407 shall be verified by affidavit by the person filing them to the effect that to the best of his or her knowledge and belief the information disclosed is a complete, true, and accurate financial statement of contributions or expenditures.

**History.** Acts 1989, No. 261, § 8; 1989, No. 634, § 8.

**7-9-409. Financial reports — Time to file — Late fee.**

(a)(1) The first financial reports shall be filed no later than fifteen (15) days following the month in which the five-hundred-dollar threshold of § 7-9-406 is met and thereafter no later than fifteen (15) days after the end of each month until the election is held. Provided, however, for any month in which certain days of that month are included in a preelection financial report required under subdivision (a)(2) of this section, no monthly report for that month shall be due, but those days of that month shall be carried forward and included in the final financial report.

(2) Additionally, a preelection financial report shall be filed no less than seven (7) days prior to any election on the ballot question or legislative question, such statement to have a closing date of ten (10) days prior to the election.

(3) Furthermore, a final financial report shall be filed no later than thirty (30) days after the election.

(b) A ballot question committee, legislative question committee, or individual person who files a late financial report shall be subject to a late filing fee not exceeding fifty dollars (\$50.00) for each day the report remains unfiled.

**History.** Acts 1989, No. 261, §§ 7, 8; 1989, No. 634, §§ 7, 8; 1999, No. 553, § 25, 27; 2007, No. 1001, § 4.

**Amendments.** The 2007 amendment substituted "fifty dollars (\$50.00)" for "twenty-five dollars (\$25.00)" in (b).

**7-9-410. Public inspection — Record retention.**

(a) All statements of organization and financial reports required by this subchapter shall be open to public inspection at the office of the Arkansas Ethics Commission during regular office hours.

(b) All records supporting the reports filed under this subchapter shall be:

(1) Made available to the commission; and

(2) Retained by the filer for a period of four (4) years after the date of filing the report.

**History.** Acts 1989, No. 261, § 9; 1989, No. 634, § 9; 1993, No. 1114, § 7; 1999, No. 553, § 28; 2007, No. 221, § 15.

**Amendments.** The 2007 amendment added (b)(1) and designated the existing provisions as (b)(2).

**7-9-411. Enforcement.**

The Arkansas Ethics Commission shall have the same power and authority to enforce the provisions of this subchapter as is provided the commission under §§ 7-6-217 and 7-6-218 for the enforcement of campaign finance laws.

**History.** Acts 1993, No. 1114, § 8.

**7-9-412. Reporting the use of state funds to oppose or support a ballot measure.**

Any funds appropriated to any state agency, board, or commission that are expended, as prescribed in § 7-9-413, for the purpose of opposing or supporting any initiative, referendum, proposed constitutional amendment, or other measure which is submitted or intended to be submitted to a popular vote at an election, whether or not it qualifies for the ballot, shall be reported to the Legislative Council if the amount exceeds one hundred dollars (\$100).

**History.** Acts 1999, No. 1006, § 1.

not apply to this section, which was enacted subsequently.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 7-9-401 to 7-9-411 may

**7-9-413. Use of state funds to oppose or support a ballot measure.**

The use of state funds under § 7-9-412 includes:

- (1) Newspaper, television, radio, and other forms of communication;
- (2) Publication materials;
- (3) Travel expenses relative to reimbursement;
- (4) Surveys;
- (5) Private contracts; and
- (6) Postage.

**History.** Acts 1999, No. 1006, § 2.

not apply to this section, which was enacted subsequently.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 7-9-401 to 7-9-411 may

**7-9-414. Applicability of §§ 7-9-412 and 7-9-413.**

This act does not apply to state funds appropriated to any elected officials.

**History.** Acts 1999, No. 1006, § 3.

acted subsequently.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 7-9-401 to 7-9-411 may not apply to this section, which was en-

**Meaning of "this act".** Acts 1999, No. 1006, codified as §§ 7-9-412 to 7-9-414.

### 7-9-415. Scope.

Nothing in this subchapter may limit, waive, or abrogate the scope of any statutory or common law privilege, including, but not limited to, the work product doctrine and the attorney-client privilege.

**History.** Acts 2005, No. 1765, § 5.

not apply to this section, which was enacted subsequently.

**A.C.R.C. Notes.** References to “this subchapter” in §§ 7-9-401 to 7-9-411 may

## SUBCHAPTER 5 — REVIEW OF INITIATIVE PETITIONS

### SECTION.

7-9-501. Purpose.

7-9-502. Construction.

7-9-503. Declaration of sufficiency.

7-9-504. Cure by correction or amendment.

### SECTION.

7-9-505. Right of review.

7-9-506. Effect on existing petition.

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**Effective Dates.** Acts 1999, No. 877, § 10: Mar. 25, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that the current procedures for review of the sufficiency of initiative petitions is insufficient; that in matters affecting amendments to the Constitution and measures to be voted on by the people, there should be a certainty with reference to the amendment or measure affected; and that this act is immediately necessary to provide for a timely and expeditious review of the sufficiency of initiative petitions. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

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### 7-9-501. Purpose.

The purpose of this subchapter is to provide for the timely and expeditious review of the legal sufficiency of initiative petitions by the Supreme Court.

**History.** Acts 1999, No. 877, § 1.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Declaration of Sufficiency.  
Time Limitations.

### Constitutionality.

Act 877 of 1999, §§ 7-9-501 to 7-9-506 does not run afoul of the provisions of Amendment 7 to the Arkansas Constitution. While Amendment 7 does contem-



plate filing the initiative petition with the requisite signatures with the Secretary of State for a sufficiency determination, at no point does it preclude an earlier review of the text of the popular name and ballot title or the validity of the proposed amendment. *Stilley v. Priest*, 341 Ark. 329, 16 S.W.3d 251 (2000).

#### **Declaration of Sufficiency.**

A petition for a declaration of sufficiency pursuant to §§ 7-9-501 to 7-9-506 may not be brought by the sponsor of the measure for which review is sought. *Woodrome v. Daniels*, 2010 Ark. 244, — S.W.3d — (2010).

#### **Time Limitations.**

Request for expedited consideration of a petition to enjoin the Arkansas Secretary of State from placing a proposed amendment on the ballot was denied where granting review six days before a general election would be unfair to the adverse parties and would not give the Supreme Court sufficient time for meaningful deliberation of the issues presented. *Ward v. Priest*, 350 Ark. 462, 88 S.W.3d 416 (2002).

**Cited:** *Reed v. State*, 35 Ark. App. 161, 814 S.W.2d 560 (1991).

### **7-9-502. Construction.**

(a) The General Assembly declares that this subchapter be construed as a measure to facilitate the provisions of Arkansas Constitution, Amendment 7.

(b) The General Assembly declares that this subchapter is not intended to expand the jurisdiction of the Supreme Court under Arkansas Constitution, Amendment 7, but is intended to provide a process to timely review the legal sufficiency of a measure in a manner which avoids voter confusion and frustration which occur when measures are stricken from the ballot on the eve of an election on the measure.

**History.** Acts 1999, No. 877, § 6.

### **7-9-503. Declaration of sufficiency.**

(a)(1) Any Arkansas taxpayer and voter may submit a written petition to the Secretary of State requesting the determination of legal sufficiency of statewide initiative petitions.

(2) The petitioner shall notify the sponsor of the measure of the petition for determination by certified mail on the date that it is submitted to the Secretary of State.

(b) Within thirty (30) days after receipt of the petition for determination, the Secretary of State shall decide and declare, after consultation with the Attorney General, questions on one (1) or both of the following issues:

(1) Whether the popular name and ballot title of the measure are fair and complete; and

(2) Whether the measure, if subsequently approved by the electorate, would violate any state constitutional provision or any federal constitutional, statutory, or regulatory provision or would be invalid for any other reason.

(c) The declaration shall be in writing and shall be mailed to the petitioner and the sponsor of the measure by certified mail on the date that it is issued.

(d) The scope of review authorized by this subchapter shall be strictly limited to the questions referred to in subsection (b) of this section and shall not include questions regarding the sufficiency or validity of signatures on the initiative petitions.

**History.** Acts 1999, No. 877, § 2.

### CASE NOTES

#### **Procedure.**

Where plaintiff failed to follow the procedures set out in § 7-9-503 through § 7-9-505, the court dismissed his challenge to determine the legality of the sufficiency of the ballot title and popular name of a proposed constitutional amendment attached with an initiative petition filed by the Arkansas Casino Corporation. *Stilley v. Priest*, 340 Ark. 259, 12 S.W.3d 189 (2000).

Supreme Court had original and exclu-

sive jurisdiction to review the legal sufficiency of a ballot title after the Secretary of State certified that an initiative petition had met the signature requirements and the requirements of Ark. Const. Amend. 7; the statute merely provides a procedure whereby a taxpayer and voter can seek an early review of a ballot title's legal sufficiency prior to the gathering of signatures and is discretionary. *Ward v. Priest*, 350 Ark. 345, 86 S.W.3d 884 (2002).

#### **7-9-504. Cure by correction or amendment.**

(a) If the Secretary of State declares the initiative petition legally insufficient, the sponsors of such measure may attempt to cure the insufficiency by correction or amendment, as provided in Arkansas Constitution, Amendment 7.

(b) Within fifteen (15) days after a correction or amendment is filed with the Secretary of State, the Secretary of State shall notify the petitioner and sponsor of the measure of this declaration by certified mail on the date that it is issued.

**History.** Acts 1999, No. 877, § 3.

### CASE NOTES

#### **Procedure.**

Where plaintiff failed to follow the procedures set out in § 7-9-503 through § 7-9-505, the court dismissed his challenge to determine the legality of the sufficiency of the ballot title and popular name of a

proposed constitutional amendment attached with an initiative petition filed by the Arkansas Casino Corporation. *Stilley v. Priest*, 340 Ark. 259, 12 S.W.3d 189 (2000).

#### **7-9-505. Right of review.**

The petitioner, the sponsor of the measure, and any Arkansas taxpayer and voter shall have the immediate right to petition the Supreme Court to review the determination of the Secretary of State regarding the sufficiency of the initiative petition.

**History.** Acts 1999, No. 877, § 4.

CASE NOTES

**Procedure.**

Where plaintiff failed to follow the procedures set out in § 7-9-503 through § 7-9-505, the court dismissed his challenge to determine the legality of the sufficiency of the ballot title and popular name of a

proposed constitutional amendment attached with an initiative petition filed by the Arkansas Casino Corporation. *Stilley v. Priest*, 340 Ark. 259, 12 S.W.3d 189 (2000).

**7-9-506. Effect on existing petition.**

(a)(1) This subchapter shall be applicable to any initiative petition which has received the approval of the Attorney General and has been filed with the Secretary of State, pursuant to § 7-9-107, as of March 25, 1999.

(2) The Secretary of State shall review all initiative petitions approved by the Attorney General within two (2) months after March 25, 1999.

(3) If this review is not completed within the stated period, the initiative petition will be presumed sufficient and subject to immediate review by the Supreme Court.

(b) In addition, this subchapter shall be applicable to all initiative petitions submitted to the Attorney General after March 25, 1999.

**History.** Acts 1999, No. 877, § 5.

CHAPTER 10

NONPARTISAN ELECTION OF JUDGES

SECTION.

7-10-101. Definitions.

7-10-102. Nonpartisan election of judges and justices.

SECTION.

7-10-103. Filing as a candidate — Judicial Filing Fee Fund.

**A.C.R.C. Notes.** Former chapter 10, §§ 7-10-101 — 7-10-111, was renumbered as § 7-4-201 et seq. [repealed].

**Effective Dates.** Acts 2001, No. 1789, § 12: Emergency clause failed. Emergency clause provided: “It is found and determined by the General Assembly that Amendment 80 to the Arkansas Constitution becomes effective on July 1, 2001; that this implements the nonpartisan

election of justices and judges as mandated by Amendment 80; and that to effectively implement Amendment 80, this act should become effective on July 1, 2001. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective on July 1, 2001.”

Acts 2011, No. 1185, § 21: Oct. 2, 2011.

RESEARCH REFERENCES

**Ark. L. Notes.** Cihak and Springman, HAVA and Arkansas Election Law Re-

form: Compliance and Promise, 2006 Arkansas L. Notes 1.



**7-10-101. Definitions.**

For the purposes of this chapter:

(1) "Nonpartisan judicial office" means the offices of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, and district judge; and

(2) "Political party" has the same meaning as provided in § 7-1-101.

**History.** Acts 2001, No. 1789, § 1.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Election Law, 24 U. Ark. Little Rock L. Rev. 465.

**7-10-102. Nonpartisan election of judges and justices.**

(a) The offices of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, and district judge are declared to be nonpartisan offices.

(b)(1) The general elections for nonpartisan judicial offices shall be held on the same dates and at the same times and places as provided by law for preferential primary elections.

(2) The names of candidates for nonpartisan judicial offices shall be included on the ballots of the political parties and shall be designated as nonpartisan judicial candidates. However, separate ballots containing the names of nonpartisan judicial candidates shall be prepared and shall be made available to voters requesting the same.

(3) No voter shall be required to vote in a political party's preferential primary in order to be able to vote in nonpartisan judicial elections.

(c)(1) A person shall not be elected to a nonpartisan judicial office without receiving a majority of the votes cast at the election for the office.

(2) In any nonpartisan judicial election in which no person receives a majority of the votes cast, the two (2) candidates receiving the highest and next highest number of votes shall be certified to a runoff election which shall be held on the same date and at the same times and places as the November general election.

(3) The names of the candidates in a nonpartisan judicial runoff election shall be placed on the same ballots as used for the November general elections.

**History.** Acts 2001, No. 1789, § 2; 2007, No. 1020, § 20; 2009, No. 959, § 44.

**Amendments.** The 2007 amendment deleted "only" following "containing" in (b)(2).

The 2009 amendment substituted "A person shall not" for "No person shall" in (c)(1).

**7-10-103. Filing as a candidate — Judicial Filing Fee Fund.**

(a) A candidate for a nonpartisan judicial office may pay a filing fee as provided for in this chapter, file a petition in the manner provided for in this chapter, or file as a write-in candidate in the manner as provided for in this chapter.

(b)(1) The State Board of Election Commissioners shall establish reasonable filing fees for nonpartisan judicial offices.

(2)(A) The filing fee for the offices of Justice of the Supreme Court, Judge of the Court of Appeals, and circuit judge shall be paid to the Secretary of State at the same time that the candidate files his or her political practices pledge. A candidate for district judge shall pay the filing fee to the county clerk at the same time that the candidate files his or her political practices pledge.

(B) The period for paying filing fees and filing political practice pledges shall be the same as the party filing period under § 7-7-203.

(3)(A) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “Judicial Filing Fee Fund”.

(B) The filing fees shall be remitted to the Treasurer of State for deposit into the fund for covering the cost of election expenses of the state board.

(c)(1)(A)(i) Any person desiring to have his or her name placed on the ballot for a nonpartisan judicial office without paying a filing fee may do so by filing a petition in the manner provided for under this section. Petitions for Supreme Court, Court of Appeals, and circuit court positions shall be filed with the Secretary of State, and petitions for district court positions shall be filed with the applicable county clerk beginning at 12:00 noon forty-six (46) days before the first day of the party filing period under § 7-7-203 and ending at 12:00 noon thirty-two (32) days before the first day of the party filing period under § 7-7-203.

(ii) Political practice pledges for nonpartisan judicial candidates filing by petition shall be filed at the same time as the petition.

(B) The petition shall be directed to the office with which it is to be filed and shall request that the name of the candidate be placed on the ballot for the election set forth in the petition. Candidates may begin circulating petitions not earlier than sixty (60) days prior to the filing deadline.

(C) The Secretary of State or the county clerk, as the case may be, shall determine within thirty (30) days whether the petition contains the names of a sufficient number of qualified electors. The Secretary of State or county clerk shall verify the sufficiency of the petitions within thirty (30) days of filing. The sufficiency of any petition filed under the provisions of this section may be challenged in the same manner as provided by law for election contests, § 7-5-801 et seq.

(D) Qualified electors signing the petitions must be registered voters in the geographic area applicable to the position at the time

they sign the petition. Each qualified elector shall provide his or her printed name, signature, address, date of birth, and date of signing on the petition.

(E) In determining the number of qualified electors in the state or in any court of appeals district, circuit court circuit, or district court district, the total number of all votes cast therein for Governor in the immediately preceding general gubernatorial election shall be conclusive of the number of all qualified electors therein for purposes of this section.

(2)(A) Candidates by petition for the Supreme Court shall file petitions signed by at least ten thousand (10,000) qualified electors or three percent (3%) of the qualified electors residing within the state, whichever is the lesser.

(B) Candidates by petition for the Court of Appeals shall file petitions signed by three percent (3%) of the qualified electors residing within the court of appeals district for which the candidate seeks office, but in no event shall more than two thousand (2,000) signatures be required.

(C) Candidates by petition for circuit judge shall file petitions signed by three percent (3%) of the qualified electors residing within the circuit for which the candidate seeks office, but in no event shall more than two thousand (2,000) signatures be required.

(D) Candidates by petition for district judge shall file petitions signed by at least one percent (1%) of the qualified electors residing within the district for which the candidate seeks office, but in no event shall more than two thousand (2,000) signatures be required.

(d) No votes for a write-in candidate in a nonpartisan judicial election shall be counted or tabulated unless the candidate or his or her agent gives notice in writing of his or her intention to be a write-in candidate to the county board of election commissioners and either:

(1)(A) The Secretary of State, if a candidate for a Supreme Court, Court of Appeals, or a circuit judgeship; or

(B) A county clerk, if a candidate for a district judgeship.

(2) The written notice must be given not later than eighty (80) days before the nonpartisan judicial election.

(3) Write-in candidates shall file a political practices pledge at the same time as filing a notice of intention.

(e)(1) A candidate for Justice of the Supreme Court, Judge of the Court of Appeals, or circuit judge shall file with the Secretary of State.

(2) A candidate for district judge shall file with the county clerk.

(f)(1)(A) A candidate for nonpartisan judicial office may not use more than three (3) given names, one (1) of which may be a nickname or any other word used for the purpose of identifying the candidate to the voters.

(B)(i) A candidate for nonpartisan judicial office may add as a prefix to his or her name the title or an abbreviation of an elective public office the candidate currently holds.



(ii) A candidate may use as the prefix the title of a judicial office in an election for a judgeship only if the candidate is currently serving in a judicial position to which the candidate has been elected.

(C) A nickname shall not include a professional or honorary title.

(2) The names and titles as proposed to be used by each candidate on the political practice pledge shall be reviewed no later than one (1) business day after the filing deadline by the Secretary of State for Supreme Court, Court of Appeals, and circuit court positions and by the county board of election commissioners for district court positions.

(3)(A) The name of every candidate shall be printed on the ballot in the form as certified by either the Secretary of State or the county board of election commissioners.

(B) However, the county board of election commissioners may substitute an abbreviated title if the ballot lacks space for the title requested by a candidate.

(C) The county board of election commissioners shall immediately notify a candidate whose requested title is abbreviated by the county board of election commissioners.

(4) A candidate shall not be permitted to change the form in which his or her name will be printed on the ballot after the deadline for filing the political practices pledge.

**History.** Acts 2001, No. 1789, § 3; 2005, No. 67, § 26; 2007, No. 1049, § 32; 2009, No. 959, § 45; 2009, No. 1407, §§ 1, 2; 2011, No. 1185, § 14.

**Amendments.** The 2007 amendment substituted “12:00 noon on the first weekday in March and end at 12:00 noon on the seventh day thereafter” for “12:00 noon on the third Tuesday in March and end at 12:00 noon on the fourteenth day thereafter” in (b)(2)(B); and twice substituted “first weekday” for “third Tuesday” in (c)(1)(A)(i).

The 2009 amendment by No. 959 added (f).

The 2009 amendment by No. 1407 inserted “or district court district” following “circuit court circuit” in (c)(1)(E); rewrote

(c)(2)(D); and made related and minor stylistic changes.

The 2011 amendment substituted “shall be the same as the party filing period under § 7-7-203” for “shall begin at 12:00 noon on the first weekday in March and end at 12:00 noon on the seventh day thereafter” in (b)(2)(B); substituted “the first day of the party filing period under § 7-7-203” for “the first weekday in March” in two places in (c)(1)(A)(i); and substituted “eighty (80)” for “sixty (60)” in (d)(2).

**Cross References.** Judicial Filing Fee Fund, § 19-5-1225.

**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Election Law, 24 U. Ark. Little Rock L. Rev. 465.

## CHAPTER 11 SPECIAL ELECTIONS

### SUBCHAPTER.

1. ELECTIONS TO FILL VACANCIES.
2. SPECIAL ELECTIONS ON MEASURES AND QUESTIONS.

## SUBCHAPTER

## 3. CERTAIN PROCEDURES FOR SPECIAL ELECTIONS.

## SUBCHAPTER 1 — ELECTIONS TO FILL VACANCIES

## SECTION.

7-11-101. Calling elections to fill vacancies.

7-11-102. Content of calling document.

7-11-103. Filling vacancies in state, federal, or district offices.

7-11-104. Filling vacancies in local offices.

7-11-105. Special elections to be held on the second Tuesday of a

## SECTION.

month — Exceptions — Separate ballots.

7-11-106. Special primary elections held in conjunction with regularly scheduled primary election — Separate ballots optional.

7-11-107. Unopposed candidates.

**Effective Dates.** Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 1185, § 21: Oct. 2, 2011.

**7-11-101. Calling elections to fill vacancies.**

All special elections and other elections to fill a vacancy in an office shall be called by proclamation, ordinance, resolution, order, or other authorized document of the appropriate constituted authority.

**History.** Acts 2009, No. 1480, § 47.

**7-11-102. Content of calling document.**

The proclamation, ordinance, resolution, order, or other authorized document of the appropriate constituted authority calling a special election or other election to fill a vacancy in an office shall set forth:

- (1) The date of the election;
- (2) The date of the special primary election, if any;
- (3) The date of the special primary runoff election, if any is required;
- (4) The deadline for filing as a party candidate with the county clerk or Secretary of State, as the case may be;
- (5) The deadline for party conventions to select nominees if applicable;
- (6) The deadline for parties to issue certificates of nomination or certified lists of nominees, as the case may be, if applicable;

(7) The deadline for candidates to file certificates of nomination, if applicable, with the county clerk or Secretary of State, as the case may be;

(8) The deadline for filing as an independent candidate and the period in which petitions for independent candidacy may be circulated;

(9) The deadline for filing as a write-in candidate if applicable;

(10) The deadline for drawing for ballot position by the county board of election commissioners; and

(11) The date the election shall be certified by the county board in each county in which the election takes place and, if applicable, by the Secretary of State.

**History.** Acts 2009, No. 1480, § 47.

### **7-11-103. Filling vacancies in state, federal, or district offices.**

(a) The proclamation, ordinance, resolution, order, or other authorized document of the appropriate constituted authority calling a special election to fill a state, federal, or district office shall be filed with the Secretary of State, who shall immediately transmit the document to the county board of election commissioners of each county where the special election shall be held.

(b) The county board shall cause the proclamation, ordinance, resolution, order, or other authorized document to be published as soon as practicable in a newspaper of general circulation in the county in which the special election is held.

**History.** Acts 2009, No. 1480, § 47.

### **7-11-104. Filling vacancies in local offices.**

(a) The proclamation, ordinance, resolution, order, or other authorized document of the appropriate constituted authority calling a special election to fill a local office shall be filed with the county clerk of the county administering the election, who shall immediately transmit the document to the county board of election commissioners of each county where the special election shall be held.

(b) The county board shall cause the proclamation, ordinance, resolution, order, or other authorized document to be published as soon as practicable in a newspaper of general circulation in the county in which the special election is held.

**History.** Acts 2009, No. 1480, § 47.

### **7-11-105. Special elections to be held on the second Tuesday of a month — Exceptions — Separate ballots.**

(a) Except as provided in this chapter, all special elections to fill vacancies in office and associated special primary elections shall be held on the second Tuesday of any month.



(b) A special election scheduled to occur in a month in which the second Tuesday of the month is a legal holiday shall be held on the third Tuesday of the month.

(c) A special election called in June of an even-numbered year shall be held on the fourth Tuesday of the month.

(d)(1) Special elections held in months in which a preferential primary election or general election is scheduled to occur shall be held on the date of the preferential primary election or general election.

(2) If a special election to fill a vacancy in office is held on the date of the preferential primary election, the names of the candidates in the special election shall be included on the ballot of each political party, and the portion of the ballot on which the special election appears shall be labeled with a heading stating "SPECIAL ELECTION FOR \_\_\_\_\_" with the name of the office set out in the heading.

(3) Separate ballots containing the names of the candidates to be voted on at the special election or nonpartisan judicial elections, if applicable, and any other measures or questions that may be presented for a vote shall be prepared and made available to voters requesting a separate ballot.

(4)(A) A voter shall not be required to vote in a political party's preferential primary in order to be able to vote in the special election.

(B)(i) If the special election is held at the same time as the general election, the names of the candidates in the special election shall be included on the general election ballot, and the portion of the ballot on which the special election appears shall be labeled with a heading stating "SPECIAL ELECTION FOR \_\_\_\_\_" with the name of the office set out in the heading.

(ii) The county board may include the special election on a separate ballot if the special election is held at the same time as the general election and the commission determines that a separate ballot is necessary to avoid voter confusion.

(e)(1) A special election to fill a vacancy in office shall be held not less than seventy (70) days following the date established in the proclamation, ordinance, resolution, order, or other authorized document for drawing for ballot position when the special election is to be held on the date of the preferential primary election or general election.

(2) If a special election to fill a vacancy in office is not held at the same time as a preferential primary election or general election, the special election shall be held not less than sixty (60) days following the date established in the proclamation, ordinance, resolution, order, or other authorized document for drawing for ballot position.

**History.** Acts 2009, No. 1480, § 47; 2011, No. 1185, § 15.

**Amendments.** The 2011 amendment substituted "seventy (70)" for "sixty-five

(65)" in (e)(1); and substituted "sixty (60)" for "fifty (50)" in (e)(2).

**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.

**7-11-106. Special primary elections held in conjunction with regularly scheduled primary election — Separate ballots optional.**

(a) When a special primary election is held on the date of the preferential primary election, the candidates to be voted upon at the special primary election shall be included on the ballot of each political party, and the portion of the ballot on which the special primary election appears shall be labeled with a heading stating "SPECIAL PRIMARY ELECTION FOR \_\_\_\_\_" with the name of the party for which nomination is sought and the office set out in the heading.

(b) The county board of election commissioners may include the special primary election on a separate ballot if the special primary election is held at the same time as a preferential primary election and the commission determines that a separate ballot is necessary to avoid voter confusion.

**History.** Acts 2009, No. 1480, § 47.

**7-11-107. Unopposed candidates.**

(a) If there is only one (1) candidate after all deadlines for filing as a candidate have passed in a special election or special primary election to fill a vacancy and if no other office or issue is on the ballot, the county board of election commissioners may provide that:

(1) Polling places shall not be open on election day and the election shall be conducted by absentee ballot and early voting only; or

(2) Only one (1) polling place shall be open and that polling place may be at the courthouse and may be staffed by the county clerk or as many poll workers as the county board deems necessary.

(b) In a county that uses voting machines or an electronic vote tabulating device, the county board may:

(1) Choose to use paper ballots counted by hand for the election; and

(2)(A) Provide that no voting machines shall be used in the election.

(B) If the county board chooses to provide that no voting machines shall be used in the election, any other provision in Arkansas law requiring the use of a voting machine shall not apply to this section.

**History.** Acts 2009, No. 1480, § 47.

**SUBCHAPTER 2 — SPECIAL ELECTIONS ON MEASURES AND QUESTIONS**

**SECTION.**

7-11-201. Calling special elections on measures or questions.

7-11-202. Calling special elections on state measures or questions.

7-11-203. Calling special elections on local measures or questions.

**SECTION.**

7-11-204. Content of calling document.

7-11-205. Dates of special elections on measures and questions — Exceptions — Separate ballots.

**Effective Dates.** Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 1185, § 21: Oct. 2, 2011.

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### **7-11-201. Calling special elections on measures or questions.**

Except for special school elections, all special elections on measures or questions referred to the voters by governmental entities as authorized by law shall be called by proclamation, ordinance, statute, resolution, order, or other authorized document of the properly constituted authority as required by law.

**History.** Acts 2009, No. 1480, § 47.

### **7-11-202. Calling special elections on state measures or questions.**

(a) The document under § 7-11-201 calling the special election on a state measure or question shall be filed with the Secretary of State, who shall immediately transmit the document to the county board of election commissioners in each county where the special election is to be held.

(b) The county board shall publish the document as soon as practicable in a newspaper of general circulation in the county in which the special election is held.

**History.** Acts 2009, No. 1480, § 47.

### **7-11-203. Calling special elections on local measures or questions.**

(a) The document under § 7-11-201 calling the special election on a local measure or question shall be filed with the county clerk of the county administering the election, who shall immediately transmit the document to the county board of election commissioners in each county where the special election is to be held.

(b) The county board shall publish the document as soon as practicable in a newspaper of general circulation in the county in which the special election is held.

**History.** Acts 2009, No. 1480, § 47.



**7-11-204. Content of calling document.**

The proclamation, ordinance, statute, resolution, order, or other authorized document of the properly constituted authority calling the special election shall state:

- (1) The date of the special election;
- (2) The full text of any measure or question for which the election is called;
- (3) The ballot title, if any, for the measure or question for which the election is called; and
- (4) Any other information required by law.

**History.** Acts 2009, No. 1480, § 47.

**7-11-205. Dates of special elections on measures and questions — Exceptions — Separate ballots.**

(a)(1)(A) Except as provided in subdivision (a)(1)(B) of this section, all special elections on measures or questions shall be held on the second Tuesday of any month, except special elections held under this section in a month in which a preferential primary election or general election is scheduled to occur shall be held on the date of the preferential primary election or general election.

(B)(i) Special elections scheduled to occur in a month in which the second Tuesday is a legal holiday shall be held on the third Tuesday of the month.

(ii) A special election called in June of an even-numbered year shall be held on the fourth Tuesday of the month.

(2)(A) If a special election is held on the date of the preferential primary election, the issue or issues to be voted upon at the special election shall be included on the ballot of each political party.

(B) The portion of the ballot containing the special election shall be labeled with a heading stating "SPECIAL ELECTION ON \_\_\_\_\_" with a brief description of the measure or question to be decided in the election.

(3) Separate ballots containing the issue or issues to be voted on at the special election and candidates for nonpartisan judicial office shall be prepared and made available to voters requesting a separate ballot.

(4) A voter shall not be required to vote in a political party's preferential primary in order to be able to vote in the special election.

(b)(1) A special election shall be held not less than seventy (70) days following the date that the proclamation, ordinance, resolution, order, or other authorized document is filed with the county clerk when the special election is to be held on the date of the preferential primary election or general election.

(2) If the special election is not held at the same time as a preferential primary election or general election, the special election shall be held not less than sixty (60) days following the date that the proclamation, ordinance, resolution, order, or other authorized document is filed with the county clerk.

**History.** Acts 2009, No. 1480, § 47; 2011, No. 1185, § 16.

**Amendments.** The 2011 amendment substituted “seventy (70)” for “sixty-five

(65)” in (b)(1), and substituted “sixty (60)” for “fifty (50)” in (b)(2).

**Effective Dates.** Acts 2011, No. 1185, § 21: Oct. 2, 2011.

### SUBCHAPTER 3 — CERTAIN PROCEDURES FOR SPECIAL ELECTIONS

#### SECTION.

7-11-301. Law governing special elections.

7-11-302. Special procedures for vacancies filled under Arkansas

#### SECTION.

Constitution, Amendment 29.

7-11-303. Notice.

**Effective Dates.** Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

#### 7-11-301. Law governing special elections.

In cases of circumstances or procedures that may arise in connection with any special election for which there is no provision in law governing the circumstances or procedures, the special election shall be governed by:

- (1) The general election laws of this state; or
- (2) In the case of special primary elections, the primary election laws of this state.

**History.** Acts 2009, No. 1480, § 47.

#### 7-11-302. Special procedures for vacancies filled under Arkansas Constitution, Amendment 29.

Whenever a vacancy in office is to be filled under Arkansas Constitution, Amendment 29, the following shall apply:

- (1) The Governor shall issue a proclamation calling an election to fill a vacancy;
- (2) If the vacancy occurs less than one hundred eighty (180) days before a general election at which the vacancy is to be filled and the position is one that may be filled by partisan election, the political parties shall choose their nominees at a convention of delegates held in accordance with the party rules for the convention;

(3) If the vacancy occurs more than one hundred eighty (180) days before the general election and is a position that may be filled by partisan election, the Governor shall certify in writing to the state committees of the respective political parties the fact of vacancy and shall request the respective state committees to make a determination and notify him or her in writing within ten (10) days with respect to whether the political parties desire to hold a special primary election or a convention of delegates under party rules to choose nominees;

(4) If the state committee of any political party shall timely notify the Governor that it chooses to hold a special primary election, it is mandatory that any political party desiring to choose a nominee shall choose the nominee at a special primary election, and the Governor's proclamation shall set dates for both the special primary election and for any runoff primary election to be held if no candidate receives a majority of the vote at the special primary election; and

(5) If no state committee of any political party timely notifies the Governor of the desire to hold either a primary election or convention of delegates, the Governor, in issuing his or her proclamation calling for the special election, shall declare that the nominee of any political party shall be chosen at a convention of delegates.

**History.** Acts 2009, No. 1480, § 47.

### **7-11-303. Notice.**

In addition to the publication of the calling document, notice of special elections under this chapter shall be published and posted under §§ 7-5-202 and 7-5-206.

**History.** Acts 2009<sup>a</sup>, No. 1480, § 47.





# TITLE 8

## ENVIRONMENTAL LAW

### (CHAPTERS 5-14 IN VOLUME 6A)

#### CHAPTER.

1. GENERAL PROVISIONS.
2. ENVIRONMENTAL TESTING.
3. WATER AND AIR POLLUTION GENERALLY.
4. ARKANSAS WATER AND AIR POLLUTION CONTROL ACT.
5. WATER POLLUTION CONTROL FACILITIES.
6. DISPOSAL OF SOLID WASTES AND OTHER REFUSE.
7. HAZARDOUS SUBSTANCES.
8. INTERSTATE COMPACTS.
9. RECYCLING.
10. POLLUTION PREVENTION.
11. ENVIRONMENTAL REGULATORY FLEXIBILITY.
12. NATURAL RESOURCES DAMAGES TRUST FUND.
13. MANAGEMENT ORGANIZATION.
14. SHIELDED OUTDOOR LIGHTING ACT.

**A.C.R.C. Notes.** Acts 1997, No. 1219, § 1, provided: "Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public's perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State's regulatory functions concerning protection of the environment."

Acts 1997, No. 1219, § 2, provided: "'Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'."

"(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

#### RESEARCH REFERENCES

**Ark. L. Notes.** Kelley, An Annotated Bibliography of Selected Environmental

Law Resources of Interest to Practicing Attorneys, 1995 Ark. L. Notes 111.

## CHAPTER 1

### GENERAL PROVISIONS

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. POWERS OF THE DEPARTMENT AND COMMISSION.
3. ENVIRONMENTAL AUDIT REPORTS.

**Effective Dates.** Acts 1991, No. 454, § 6: Mar. 11, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Director of the Department of Pollution Control and Ecology is in need of additional authority to deny applications for the issuance or transfer of permits if he determines that an applicant, or person with substantial influence over the applicant, has a history of noncompliance with environmental laws or regulations; this act provides such authority and should be given immediate effect in order to grant additional environmental protection as soon as possible. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the pro-

tection of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1254, § 9: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state's ability to provide efficient and effective programs in the protection of the state's environment as mandated through the activities of the Department of Pollution Control and Ecology. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

#### RESEARCH REFERENCES

**Ark. L. Notes.** Kelley, An Annotated Bibliography of Selected Environmental Law Resources of Interest to Practicing Attorneys, 1995 Ark. L. Notes 111.

**U. Ark. Little Rock L.J.** Legislative Survey, Environmental Law, 16 U. Ark. Little Rock L.J. 111.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

##### SECTION.

- 8-1-101. Purpose.
- 8-1-102. Definitions.
- 8-1-103. Powers and duties.
- 8-1-104. Existing rules and regulations.
- 8-1-105. Fee fund.
- 8-1-106. Definitions — Disclosure statements — Denial of applica-

##### SECTION.

- tion — Appeal — Regulations.
- 8-1-107. Inspections — Definitions — Investigations — Inspection warrant — Exceptions — Penalties.

**A.C.R.C. Notes.** Acts 1997, No. 1219, § 1, provided: "Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control &

Ecology. Confusion on these issues in the public's perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and



rulemaking roles for the State's regulatory functions concerning protection of the environment."

Acts 1997, No. 1219, § 2, provided: "'Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'.

"(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

**Effective Dates.** Acts 1995, No. 509, § 7: Mar. 2, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of

Arkansas that an adjustment is needed to adjust the collection cap due to additional fees to be generated by the permitting of composting facilities and transfer stations, and to clarify cost recovery authorization for administrative services provided by the Department of Pollution Control and Ecology. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 2007, No. 1281, § 52: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007."

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### 8-1-101. Purpose.

(a) It is the purpose of this chapter to authorize the Arkansas Pollution Control and Ecology Commission to establish a system of fees for the issuance of permits required by §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-314, 8-6-201 — 8-6-212, 8-6-213 [repealed], 8-6-214, 8-6-215 — 8-6-217 [superseded], and 8-9-403, to defray costs of other services provided and to authorize the Arkansas Department of Environmental Quality to collect and enforce these fees.

(b) The express purpose of these fees shall be to defray the administrative costs of issuance, renewal, inspection, modification, and monitoring associated with these permits and other services provided.

**History.** Acts 1983, No. 817, § 1; A.S.A. 1947, § 82-1916; Acts 1993, No. 163, § 1; 1993, No. 165, § 1; 1995, No. 509, § 1; 1999, No. 1164, § 3.

**A.C.R.C. Notes.** Sections 8-6-215 — 8-6-217 have been superseded by § 8-1-106.

**Cross References.** Arkansas Solid

Waste Management Act, § 8-6-201 et seq.  
Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

### 8-1-102. Definitions.

As used in this chapter:

(1) "Annual review fee" means that fee required by this chapter to be submitted upon the anniversary date of issuance of the permits required by the statutes enumerated in subdivision (6) of this section;

(2) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(3) "Department" means the Arkansas Department of Environmental Quality;

(4) "Director" means the executive head and active administrator of the Arkansas Department of Environmental Quality;

(5) "Facility" means any activity or operation within a specific geographic location, including property contiguous thereto. A facility may consist of several treatment, storage, or disposal operational units;

(6) "Initial fee" means that fee required by this chapter to be submitted with all applications for water, air, and solid waste permits required by §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-314, 8-6-201 — 8-6-212, 8-6-213 [repealed], 8-6-214, 8-6-215 — 8-6-217 [superseded], or 8-9-403; and

(7) "Modification fee" means the fee required to be submitted by this chapter for modification of any existing or future permit required by the statutes enumerated in subdivision (6) of this section, either at the request of the permittee or as required by the laws of the State of Arkansas or the rules and regulations of the department.

**History.** Acts 1983, No. 817, § 2; A.S.A. 1947, § 82-1917; Acts 1993, No. 163, § 2; 1993, No. 165, § 2; 1995, No. 509, § 2; 1999, No. 1164, § 4.  
**A.C.R.C. Notes.** Sections 8-6-215 — 8-6-217 have been superseded by § 8-1-106.

### 8-1-103. Powers and duties.

The Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission shall have the following powers and duties, respectively:

(1)(A) Following a public hearing and based upon a record calculating the reasonable administrative costs of evaluating and taking action on permit applications and of implementing and enforcing the terms and conditions of permits and variances, the commission shall establish, by regulation, reasonable fees for initial issuance, annual review, and modification of water, air, or solid waste permits required by §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-314, 8-6-201 — 8-6-212, 8-6-213 [repealed], 8-6-214, 8-6-215 — 8-6-217 [superseded], and 8-9-403. These fees shall consist of initial fees, annual review fees, and modification fees, as defined in § 8-1-102.

(B)(i) All fees will be capped at no more than the appropriation. Provided, however, in setting reasonable permit fees, the commission shall:

(a)(1) Set water permit fees calculated to generate revenues in any fiscal year greater than three and one-quarter (3.25) times the total amount collected from water permit fees in fiscal year 1992-1993.

(2) Provided, water permit fee revenues generated through permits issued for new facilities which are permitted after July 1, 1995, shall not be subject to the overall fee cap specified for water permit fees herein;

(b)(1) Effective July 1, 2000, set water permit fees calculated to generate no revenues in any fiscal year greater than three and five-tenths (3.5) times the total amount collected from water permit fees in fiscal year 1992-1993.

(2) Provided, however, effective July 1, 2001, water permit fee revenues may be increased up to three percent (3%) per year; and

(c)(1) Set solid waste permit fees for Class I and Class III landfills calculated to generate revenues in any fiscal year that exceed four and one-quarter (4.25) times the total amount of permit fees collected from Class I and Class III solid waste landfills in fiscal year 1992-1993.

(2) Provided, that the total fee revenues cannot exceed one and one-quarter (1.25) times the total amount collected from solid waste permit fees in fiscal year 1994-1995.

(ii) Should the amount of permit fees levied on and received from permits existing prior to June 30, 1995, exceed the amounts specified in subdivision (1)(B)(i) of this section in a fiscal year, the overcollections may be retained by the department to be used to reduce permit fees in subsequent years by relative amounts.

(iii) With the exception of major underground injection control wells, fees for no-discharge state permits will be capped at five hundred dollars (\$500);

(2)(A) The regulations shall provide that the fees shall be assessed on a per-facility basis for the following categories of permits:

(i) Air;

(ii) Water; and

(iii) Solid waste.

(B) All annual fees for air permits issued under the state implementation plan or the regulations promulgated pursuant to the Clean Air Act shall be assessed in accordance with the Clean Air Act.

(C) The regulations may include a provision for appropriate adjustments in the fees to reflect carryover fee collections in excess of the administrative costs of issuance, renewal, inspection, modification, and monitoring associated with these permits.

(D) Notwithstanding other provisions of this subchapter and other applicable laws, the commission is authorized to promulgate and the department is authorized to collect annual fees from facilities electing to operate under the terms and conditions of a pollution preven-



tion plan in lieu of an air permit. The annual pollution prevention plan fee shall be equal to the fee otherwise applicable to facilities operating under an air permit;

(3) The department shall collect the permit fees as established by the commission and shall deny the issuance of an initial permit, a renewal permit, or a modification permit if and when any facility subject to control by the department fails or refuses to pay the fees after reasonable notice as established by the regulations promulgated under this chapter;

(4) The department shall require that any fee defined in this chapter shall be paid prior to the issuance of any permit; and

(5) The department is hereby authorized to promulgate such rules and regulations necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe and collect such fees, rates, tolls, or charges for the services delivered by the department in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

**History.** Acts 1983, No. 817, § 3; A.S.A. 1947, § 82-1918; Acts 1987, No. 629, § 1; 1991, No. 789, § 1; 1993, No. 163, § 3; 1993, No. 165, § 3; 1993, No. 1254, §§ 1, 5; 1995, No. 509, § 3; 1995, No. 1056, § 1; 1997, No. 310, § 1; 1999, No. 1052, § 1; 1999, No. 1164, § 5.

**A.C.R.C. Notes.** Sections 8-6-215 — 8-6-217 have been superseded by § 8-1-106.

As amended by Acts 1995, Nos. 509 and 1056, subdivision (1)(B)(i) also provided: "In raising the cap for total fee revenues, fees for solid waste permits shall not increase in fiscal years 1995-96 and 1996-97."

Acts 2005, No. 1996, § 1, provided: "(a) There is created the Manufactured Drug Inspection and Cleanup Study Committee.

"(b) The committee shall be composed of the directors or the directors' designees of the following state agencies that shall jointly conduct the study required under subsection (d) of this section:

"(1) Arkansas Department of Environmental Quality;

"(2) Department of Health;

"(3) Arkansas Manufactured Home Commission;

"(4) Arkansas Landlord's Association;

"(5) State Crime Laboratory;

"(6) Arkansas Drug Director; and

"(7) Department of Arkansas State Police.

"(c)(1) The following entities may participate in the committee:

"(A) Arkansas Chiefs of Police Association;

"(B) Arkansas Hospitality Association;

"(D) [sic] Mortgage Bankers Association of Arkansas;

"(E) Arkansas Realtors Association; and

"(F) Arkansas Sheriffs Association.

"(2) If any entity listed in subdivision (c)(1) of this section joins the committee, that entity shall be included as a full partner in all matters before the committee.

"(d)(1) The committee shall conduct a study concerning inspection and cleanup of properties where controlled substances have been manufactured.

"(2) The study shall determine what guidelines should be established for inspection and cleanup of structures where controlled substances, as defined in the Uniform Controlled Substances Act, § 5-64-101 et seq., have been manufactured and initial cleanup has been performed by law enforcement agencies, including:

"(A) Certification and guidelines for private entities that undertake inspections of contaminated properties;

"(B) Certification and guidelines for private entities that undertake remediation or removal, or both, of contaminated materials from contaminated properties;

"(C) Guidelines for appropriate record-keeping by the Department of Health or

another appropriate governmental entity with respect to:

“(i) A listing of contaminated properties;

“(ii) Inclusion of property on the contaminated properties list;

“(iii) The results of cleanup of contaminated properties and removal of a structure from the contaminated property list; and

“(iv) Access to the records created under subdivisions (d)(2)(C)(i)-(iii) of this section by potential purchasers of contaminated properties; and

“(D) Guidelines for steps to be taken by property owners for removal of a structure from the contaminated property list.

“(e) The committee shall report its findings to the Legislative Council on or before January 1, 2006.

“(2) The report shall include, but not be limited to:

“(A) A summary of all of the certification and guidelines developed under subsection (d) of this section; and

“(B) A determination concerning whether, with respect to inspection and cleanup of contaminated properties:

“(i) Legislation should be enacted by the General Assembly; or

“(ii) Regulatory action should be taken by the Department of Health or another appropriate governmental entity under existing law.”

Acts 2011, No. 957, § 38, provided: “REPORTING REQUIREMENTS. The Department shall present the following data to Legislative Council quarterly, due by the 15th day of the month following the quarter, beginning July 15, 2011:

“(a) Number and type of environmental permits currently authorized by the Department and the Pollution Control and Ecology Commission in each environmental permit category;

“(b) Total funds collected from permit fees for each permit category and the percent increase or decrease in permit fees annually;

“(c) Description of each environmental permit application pending in each environmental permit category, the number of days each permit has been pending, and the reasons for delays in issuing permits for each permit that has been pending for more than 45 days;

“(d) Number and type of enforcement actions initiated by the Department, the

geographic location of each violation and the total fines and collections from Supplemental Environmental Projects, the percent increase or decrease in fines levied annually and

“(e) Description of all pending rulemaking activities and justifications thereof, including economic impact and environmental benefit analysis.

“The provisions of this section shall be in effect only from July 1, 2010 through June 30, 2012.”

Acts 2011, No. 957, § 44, provided: “FAYETTEVILLE SHALE QUARTERLY REPORTING. The Arkansas Department of Environmental Quality shall report on a quarterly basis to the Arkansas Legislative Council or the Joint Budget Committee the number of inspections, any hearings, findings, orders, fines, or other agency regulatory or enforcement actions or activities involving the Fayetteville Shale. The quarterly reports shall be provided no later than the 15th day of the month immediately following the end of each quarter.

“The provisions of this section shall be in effect only from July 1, 2010 through June 30, 2012.”

**Publisher’s Notes.** Acts 1983, No. 817, § 4, provided that the initial fee will not be enforced retroactively against water, solid waste, or air pollution control facilities that hold valid permits as of July 4, 1983.

Acts 1991, No. 609, § 1, provided: “It is the public policy of this state that vigorous efforts be made to protect our fragile environment. Recognizing that duties concerning protection of the environment have been assigned to several agencies of state government, it is found that to enhance efforts to protect the environment, authority for instituting civil suits to protect the environment in the courts of this state and of the United States should be placed in the office of the Attorney General.”

Acts 1991, No. 609, § 3, provided: “This Act shall not be construed as superseding or impairing any legal authority currently vested with the Arkansas Department of Pollution Control and Ecology, nor shall this Act in any way affect programs delegated by federal agencies to the Arkansas Department of Pollution Control and Ecology.”

Acts 1993, No. 1254, § 5, codified as subdivision (5) of this section, is also codified as §§ 8-1-105(c), 8-7-226(d), and 8-9-404(g).

**U.S. Code.** The Clean Air Act, referred to in this section, is codified as 42 U.S.C. § 7401 et seq.

### 8-1-104. Existing rules and regulations.

All existing rules and regulations of the Arkansas Department of Environmental Quality not inconsistent with the provisions of this chapter relating to subjects embraced within this chapter shall remain in full force and effect until expressly repealed, amended, or superseded if the rules and regulations do not conflict with the provisions of this chapter.

**History.** Acts 1983, No. 817, § 6; A.S.A. 1947, § 82-1921.

### 8-1-105. Fee fund.

(a) An Arkansas Department of Environmental Quality Fee Trust Fund is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

(b) All interest earnings and fees collected under the provisions of all laws administered by the Arkansas Department of Environmental Quality shall be deposited into this fund unless otherwise provided by law. The department shall use these funds to defray the costs of operating the department.

(c) The department is hereby authorized to promulgate such rules and regulations as are necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe and collect such fees, rates, tolls, or charges for the services delivered by the department in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

**History.** Acts 1983, No. 817, § 5; A.S.A. 1947, § 82-1920; Acts 1993, No. 1254, §§ 2, 5; 1999, No. 1164, § 6; 2007, No. 1281, § 36.

**A.C.R.C. Notes.** Acts 2007, No. 1281, § 49, provided: "On or after July 1, 2007, any appropriation made payable from the Arkansas Department of Environmental Quality Fee Fund shall be made payable from the Arkansas Department of Envi-

ronmental Quality Fee Trust Fund."

**Publisher's Notes.** Acts 1993, No. 1254, § 5, codified as subsection (c) of this section, is also codified as §§ 8-1-103(5), 8-7-226(d), and 8-9-404(g).

**Amendments.** The 2007 amendment inserted "Trust" in (a) and "interest earnings and" in (b).

**Cross References.** Miscellaneous funds, § 19-5-1001 et seq.

### 8-1-106. Definitions — Disclosure statements — Denial of application — Appeal — Regulations.

(a) For the purposes of this section:

(1) "Affiliated person" means:

(A) Any officer, director, or partner of the applicant;



(B) Any person employed by the applicant in a supervisory capacity over operations of the facility that is the subject of the application that may adversely impact the environment, or with discretionary authority over such operations;

(C) Any person owning or controlling more than five percent (5%) of the applicant's debt or equity; and

(D) Any person who is not now in compliance or has a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction and who through relationship by affinity or consanguinity or through any other relationship could be reasonably expected to significantly influence the applicant in a manner that could adversely affect the environment;

(2) "Disclosure statement" means a written statement by the applicant that contains:

(A) The full name and business address of the applicant and all affiliated persons;

(B) The full name and business address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%) or that is a parent company or subsidiary of the applicant, and a description of the ongoing organizational relationships as they may impact operations within the state;

(C) A description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental regulation;

(D) A listing and explanation of any civil or criminal legal actions by government agencies involving environmental protection laws or regulations against the applicant and affiliated persons in the ten (10) years immediately preceding the filing of the application, including administrative enforcement actions resulting in the imposition of sanctions, permit or license revocations or denials issued by any state or federal authority, actions that have resulted in a finding or a settlement of a violation, and actions that are pending;

(E) A listing of any federal environmental agency and any other environmental agency outside this state that has or has had regulatory responsibility over the applicant; and

(F) Any other information the Director of the Arkansas Department of Environmental Quality may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons; and

(3) "History of noncompliance" means past operations by an applicant that clearly indicate a disregard for environmental regulation or a demonstrated pattern of prohibited conduct that could reasonably be expected to result in adverse environmental impact if a permit were issued.

(b)(1) Except as provided in subdivisions (b)(2) and (4) of this section, all applicants for the issuance or transfer of any permit, license, certification, or operational authority issued by the Arkansas Department of Environmental Quality shall file a disclosure statement with

their applications. Deliberate falsification or omission of relevant information from disclosure statements shall be grounds for civil or criminal enforcement action or administrative denial of a permit, license, certification, or operational authorization.

(2) The following persons or entities are not required to file a disclosure statement pursuant to this section:

(A)(i) Governmental entities, consisting only of subdivisions or agencies of the federal government, agencies of the state government, counties, municipalities, or duly authorized regional solid waste management boards as defined by § 8-6-702.

(ii) This exemption shall not extend to improvement districts or any other subdivision of government that is not specifically instituted by an act of the General Assembly; and

(B) Applicants for a general permit to be issued by the department pursuant to its authority to implement the National Pollutant Discharge Elimination System for storm water discharge or any other person or entity the Arkansas Pollution Control and Ecology Commission may by rule exempt from the submissions of a disclosure statement.

(3) Nothing in this subsection, including the exemptions in subdivision (b)(2) of this section, shall be construed as a limitation upon the authority of the director to deny a permit based upon a history of noncompliance to any applicant or for other just cause.

(4) If the applicant is a publicly held company required to file periodic reports under the Securities Exchange Act of 1934 or a wholly owned subsidiary of a publicly held company, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the United States Securities and Exchange Commission that provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit such other information as the director may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

(5) For a person or an entity seeking a renewal of an expiring permit, license, certification, or operational authorization, the disclosure requirements of this section shall be met if the person or entity:

(A) Discloses any change in previously submitted information or verifies that the previously submitted information remains accurate; and

(B) Submits the information on forms developed by the department.

(6) The commission may adopt regulations exempting certain permits, licenses, certifications, or operational authorizations from the disclosure requirements and establish reasonable and appropriate disclosure information, if any, required for specific types of permits, licenses, certifications, or operational authorizations based on:

(A) The scope of a permit, license, certification, or operational authorization; and

(B) The person or entity that would receive a permit, license, certification, or operational authorization.

(c) The director may deny the issuance or transfer of any permit, license, certification, or operational authority if he or she finds, based upon the disclosure statement and other investigation which he or she deems appropriate, that:

(1) The applicant has a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction;

(2) An applicant that owns or operates other facilities in the state is not in substantial compliance with, or on a legally enforceable schedule that will result in compliance with, the environmental laws or regulations of this state; or

(3) A person with a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction is affiliated with the applicant to the extent of being capable of significantly influencing the practices or operations of the applicant that could have an impact upon the environment.

(d) In reaching any decision pursuant to the requirements of this section, the director shall consider:

(1) The potential danger to the environment and public health and safety if the applicant's proposed activity is not conducted in a competent and responsible manner;

(2) The degree to which past and present activities in this state and other jurisdictions directly bear upon the reliability, competence, and responsibility of the applicant; and

(3) Any evidence of rehabilitation following past violations or convictions.

(e) Any person or legal entity aggrieved by a decision of the director under this section may appeal to the commission through administrative procedures adopted by the commission.

(f) The commission shall adopt regulations necessary to implement this section.

**History.** Acts 1991, No. 454, § 1; 1993, No. 163, § 4; 1993, No. 165, § 4; 1993, No. 1052, § 1; 1995, No. 384, § 1; 1999, No. 1164, § 7; 2007, No. 1005, § 1; 2007, No. 1019, §§ 1, 2; 2009, No. 1199, §§ 1, 2; 2011, No. 222, § 1.

**Publisher's Notes.** Acts 1973, No. 262, § 2, which amended Acts 1949, No. 472, § 2(b), referred to a Commission on Pollution Control and Ecology, which is probably the same commission as the Arkansas Pollution Control Commission created by Acts 1949, No. 472, § 2(a) as amended. However, Acts 1973, No. 262 did not change the name of the commission created in Acts 1949, No. 472, § 2(a) as Acts 1985, No. 930, § 1, in part, amended Acts

1949, No. 472, § 2, to create an Arkansas Pollution Control and Ecology Commission.

Acts 1989, No. 531 was codified at § 8-6-213(a) [repealed] and §§ 8-6-215 — 8-6-217 [superseded].

Acts 1991, No. 454, § 2, provided: "The provisions of this act expressly supersede those set out in Act 531 of 1989. This act does not supersede or affect in any way the Arkansas Surface Coal and Mining Act and implementing regulations as it impacts on the import of past or pending violations upon surface coal mining operators."

The reference to the Arkansas Surface Coal and Mining Act in Acts 1991, No.



454, § 2, may refer to the Arkansas Surface Coal Mining and Reclamation Act of 1979.

**Amendments.** The 2007 amendment by No. 1005 added “or any other person or entity the commission may by rule exempt from the submission of a disclosure statement” at the end of (b)(2)(B).

The 2007 amendment by No. 1019 substituted “means” for “includes, but is not limited to” in (a)(1)(A); substituted “subdivisions (b)(2) and (b)(4)” for “subdivision (4)” in (b)(1); substituted “subdivision (b)(2) of this section” for “subdivision (2) of this subsection” in (b)(3); added (b)(5) and (b)(6); and made related changes.

The 2009 amendment substituted “management boards as defined by § 8-6-

702” for “authorities as defined by § 8-6-707” in (b)(2)(A)(i); consolidated (b)(5)(B) with (b)(5)(A); redesignated the subsequent subdivision as (b)(5)(B); and made related changes.

The 2011 amendment substituted “name and business address” for “name, business address, and social security number” in (a)(2)(A).

**U.S. Code.** The Securities and Exchange Act of 1934, referred to in this section, is primarily codified as 15 U.S.C. § 78a et seq.

**Cross References.** State water pollution control agency and permit program for discharges into navigable waters, § 8-4-208.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J. Survey—Environmental Law**, 14 U. Ark. Little Rock L.J. 779.

### 8-1-107. Inspections — Definitions — Investigations — Inspection warrant — Exceptions — Penalties.

(a) **GENERAL.** Whenever it shall be necessary for the purpose of implementing or monitoring the enforcement of any law charged to the authority of the Arkansas Department of Environmental Quality, any authorized employee or agent of the department may enter upon any public or private property for the purpose of obtaining information or conducting investigations or inspections, subject to the following provisions.

(b) **DEFINITIONS.** As used in this section, the following terms shall have these ascribed meanings:

(1) “Administrative inspections” means investigation by department personnel at facilities operating within the department’s apparent regulatory jurisdiction;

(2) “Facility” means the public or private area, premises, curtilage, building, or conveyance described as the subject of administrative inspection;

(3) “Pervasively regulated facility or activity” means the activity or facility that is the location of activity authorized by the department through a permit, license, certification, or operational status approval; and

(4)(A) “Probable cause” means showing that an administrative search limited in scope is necessary to ensure compliance with or enforcement of laws, regulations, or orders charged to the department for implementation.

(B) For the purpose of conducting administrative inspections or applying for administrative warrants, probable cause may be pro-

vided to the department through complaints or other means that reasonably justify a limited and controlled administrative inspection.

(c) ADMINISTRATIVE INSPECTIONS.

(1)(A) Whenever the department obtains information that supports reasonable cause to believe that a violation of any law within its regulatory authority is being or has been violated, or that unauthorized regulated conduct is occurring or has occurred, department personnel or its agents may demand entry onto any property, public or private, to inspect any facility.

(B) The department's investigation or inspection shall be limited to that necessary to confirm or deny the cause which prompted the investigation or inspection, and shall be conducted during daylight, during regular business hours, or, under emergency or extraordinary circumstances, at a time necessary to observe the suspected violation or unauthorized conduct.

(C) Except under emergency circumstances, the department shall inform such facility's owner or agent of all information which forms the basis of its probable cause at the time of the inspection.

(2) Nothing in this subsection shall be construed as requiring the department to forfeit the element of surprise in its inspection efforts.

(3) Also, nothing in this section shall be construed as limiting the frequency of the periodic or random inspections of pervasively regulated facilities or activities.

(4) For the purpose of this section, a rebuttable presumption concerning the jurisdiction of the department's regulatory authority is established as it regards the department's authority to inspect any facility.

(d) ADMINISTRATIVE WARRANTS. If consent to inspect is denied, the department may obtain an administrative inspection warrant from a judicial officer. Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judicial officer otherwise authorized to issue search warrants within his or her jurisdiction may, upon proper oath or affirmation showing probable cause as defined by this section, issue warrants for the purpose of conducting administrative inspections authorized by any law or regulation administered by the department;

(2) A warrant shall issue only upon an affidavit of a department official, employee, or agent having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he or she shall issue a warrant identifying the facility to be inspected, and the purpose of the inspection. The warrant shall:

(A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(B) Be directed to a department officer or employee;

(C) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified;



(D) Specifically identify any documents or samples to be gathered during the inspection;

(E) Direct that it be served during normal business hours unless emergency or extraordinary circumstances compel otherwise; and

(F) Designate the judge or magistrate to whom it shall be returned;

(3) If appropriate, the warrant may authorize the review and copying of documents which may be relevant to the purpose of the inspection. If documents must be seized for the purpose of copying, the person serving the warrant shall prepare an inventory of documents taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or facility the documents were taken, if present, or in the presence of at least one (1) credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose facility the documents were taken. The seized documents shall be copied as soon as feasible under circumstances preserving their authenticity, then returned to the person from whom the documents were taken;

(4) The warrant may authorize the taking of samples of materials generated, stored, or treated at the facility, or of the water, air, or soils within the facility's control or that may have been affected by the facility's operations. The person executing the warrant shall prepare an inventory of all samples taken. In any inspection conducted pursuant to an administrative warrant in which such samples are taken, the department shall make split samples available to the person whose facility is being inspected;

(5) A warrant issued pursuant to this section must be executed and returned within ten (10) days of its date unless, upon a showing of a need for additional time, the court orders otherwise. The return of the warrant shall be made promptly, accompanied by a written inventory of any documents or samples taken;

(6) The judge or magistrate who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the circuit court for the judicial district in which the inspection was made;

(7) This subsection does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with duly adopted administrative procedures; and

(8) A copy of the warrant and all supporting affidavits shall be provided to the person served, or left at the entry of the facility inspected.

(e) ADMINISTRATIVE WARRANTS — EXCEPTIONS. Notwithstanding the previous subsection, an administrative warrant shall not be required for any inspection, including the review and copying of documents and taking of samples, under the following circumstances:

(1) For pervasively regulated facilities or activities as defined by this section whose permit, license, certification, or operational approval



from the department provides notice that the department may inspect regulated activities to assure compliance. If the department has reason to believe that a violation of any law has or is occurring, the basis for such belief shall be communicated at the time of the inspection;

(2) If the owner, operator, or agent in charge of the facility consents;

(3) In situations presenting imminent danger to public health and safety or the environment;

(4) In situations involving inspection of conveyances, if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(5) In any other exception or emergency circumstance when time or opportunity to apply for a warrant is lacking;

(6) In situations involving conditions that may be observed in an open field, from an area practically open to public access, or in plain view; or

(7) In all other situations in which a warrant is not constitutionally required.

(f) **PENALTIES.** Any willful and unjustified refusal of right of entry and inspection to department personnel as set out in this section shall constitute a misdemeanor subject to a fine of up to twenty-five thousand dollars (\$25,000) or civil penalties up to twenty-five thousand dollars (\$25,000).

**History.** Acts 1991, No. 1076, § 2.

**Publisher's Notes.** Acts 1991, No. 1076, § 1, provided: "The General Assembly hereby determines and declares that protection of the environment is of paramount governmental interest in the State of Arkansas, and that standards which will permit administrative inspections consonant with the United States and Arkansas Constitutions must be estab-

lished which clarify the ADPC&E's inspection authority, and provide for the issuance of administrative inspection warrants when circumstances require. Therefore, the purpose of this act is to clarify and supplement the inspection authority vested with the department. This act shall be given a liberal interpretation so as to implement its remedial intent."

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J. Survey**—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

## SUBCHAPTER 2 — POWERS OF THE DEPARTMENT AND COMMISSION

### SECTION.

8-1-201. Legislative intent.

8-1-202. Powers of the Director of the Arkansas Department of Environmental Quality.

8-1-203. Powers and responsibilities of the Arkansas Pollution

### SECTION.

Control and Ecology Commission.

8-1-204. Administrative hearing officer.

8-1-205. Mercury Task Force recommendations — Implementation.

**A.C.R.C. Notes.** References to “this subchapter” in §§ 8-1-201 — 8-1-203 may not apply to §§ 8-1-204 and 8-1-205 which were enacted subsequently.

Acts 1997, No. 1219, § 1, provided: “Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public’s perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State’s regulatory functions concerning protection of the environment.”

Acts 1997, No. 1219, § 2, provided: “‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.” (a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of

Pollution Control and Ecology prior to the effective date of the name change.”

**Publisher’s Notes.** Acts 1991, No. 1230, § 4, provided: “The provisions of this act shall be in addition and supplemental to all other laws of Arkansas and rules, regulations or policies adopted by the Arkansas Commission on Pollution Control and Ecology now in effect and shall repeal only such laws or parts of laws as may be specifically in conflict with this act.”

**Effective Dates.** Acts 1993, No. 1264, § 6: Apr. 20, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that consideration of economic impact and environmental benefit should be immediately implemented by the Commission and this act being necessary for the immediate preservation of the environment and the welfare of the state shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 1191, § 44: July 1, 1995. Emergency clause provided: “It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995.”

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## 8-1-201. Legislative intent.

(a) The General Assembly recognizes that since 1949, when the precursor of the Arkansas Pollution Control and Ecology Commission was first created, significant changes have occurred in the responsibilities charged to the state’s environmental agency. This subchapter intends to clarify and supersede prior law that does not comport with this delineation of responsibility between the Arkansas Department of

Environmental Quality and the Arkansas Pollution Control and Ecology Commission.

(b) Further, in delineating the responsibility between the department and the commission, it is the intent of the General Assembly neither to expand nor to diminish any rights of property owners of this state under Arkansas Constitution, Article 2, § 22.

**History.** Acts 1991, No. 1230, § 1;  
1993, No. 163, § 5; 1993, No. 165, § 5;  
1997, No. 1219, § 4.

### **8-1-202. Powers of the Director of the Arkansas Department of Environmental Quality.**

(a) The executive head of the Arkansas Department of Environmental Quality shall be the Director of the Arkansas Department of Environmental Quality, who shall be appointed by the Governor with the consent of the Senate. The director shall serve at the pleasure of the Governor.

(b)(1) The director shall be the executive officer and active administrator of all pollution control activities in the state.

(2) As such, the director's duties shall include:

(A)(i) The administration of permitting, licensing, certification, and grants programs deemed necessary to protect the environmental integrity of the state.

(ii) The director, or his or her delegatee within his or her staff, shall serve as the issuing authority for the state;

(B)(i) Initiation and settlement of civil or administrative enforcement actions to compel compliance with laws, orders, and regulations charged to the responsibility of the department.

(ii) In this regard, the director may propose the assessment of civil penalties as provided by law and take all actions necessary to collect such penalties;

(C) Issuance of orders in such circumstances that reasonably require emergency measures to be taken to protect the environment or the public health and safety, except to the extent that the matter involved is reserved to the jurisdiction or orders of the Arkansas Pollution Control and Ecology Commission for rulemaking procedures in § 8-4-202;

(D) Day-to-day administration of all activities that the department is empowered by law to perform, including, but not limited to, the employment and supervision of such technical, legal, and administrative staff, within approved appropriations, as is necessary to carry out the responsibilities vested with the department;

(E) Providing technical and legal expertise and assistance in the field of environmental protection to other agencies and subdivisions of the state as appropriate;

(F) Day-to-day administration of environmental programs delegated to the State of Arkansas by the responsible agencies of the federal government; and



(G) Any other power or duty specifically vested with the director or department by the General Assembly.

**History.** Acts 1991, No. 1230, § 1; 1993, No. 163, § 6; 1993, No. 165, § 6; 1999, No. 1164, § 8.

### **8-1-203. Powers and responsibilities of the Arkansas Pollution Control and Ecology Commission.**

(a) The Arkansas Pollution Control and Ecology Commission shall meet regularly in publicly noticed open meetings to discuss and rule upon matters of environmental concern.

(b) The commission's powers and duties shall be as follows:

(1)(A) Promulgation of rules and regulations implementing the substantive statutes charged to the Arkansas Department of Environmental Quality for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than the federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report which shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgation of rules, regulations, and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, providing the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department. However, the director shall always remain within the plenary authority of the Governor; and

(8) Upon a majority vote, initiate review of any director's decision.

(c)(1) In providing for adjudicatory review as contemplated by subdivisions (b)(4) and (5) of this section, the commission may appoint one (1) or more administrative hearing officers. The administrative hearing officers shall at all times serve as agents of the commission.

(2) In hearings upon appeals of permitting or grants decisions by the director or contested administrative enforcement or emergency actions initiated by the director, the administrative hearing officer shall administer the hearing in accordance with procedures adopted by the commission and, after due deliberation, submit his or her recommended decision to the commission.

(3)(A)(i) Commission review of any appealed or contested matter shall be upon the record compiled by the administrative hearing officer and his or her recommended decision.

(ii) Commission review shall be de novo. However, no additional evidence need be received unless the commission so decides in accordance with established administrative procedures.

(B) The commission may afford the opportunity for oral argument to all parties of the adjudicatory hearing.

(C)(i) By the majority vote of a quorum, the commission may affirm, reverse and dismiss, or reverse and remand to the director.

(ii) If the commission votes to affirm or reverse, such decision shall constitute final agency action for purposes of appeal.

(4) Any party aggrieved by the commission decision may appeal as provided by applicable law.

(d) The chair of the Arkansas Pollution Control and Ecology Commission may appoint one (1) or more committees composed of commission members to act in an advisory capacity to the full commission.

**History.** Acts 1991, No. 1230, § 1; 1993, No. 163, § 7; 1993, No. 165, § 7; 1993, No. 1264, § 2; 1995, No. 117, § 1.

**Publisher's Notes.** Acts 1993, No. 921, § 1, provided: "(a) The Pollution Control & Ecology Commission shall be authorized to hire a full-time administrative hearing officer at Grade 99 to perform such functions and duties as the Commission shall direct and in particular to advise the Commission on matters of law and procedure that may arise during the conduct of Commission duties and responsibilities as outlined in Arkansas Code § 8-1-203; § 8-4-201; 8-4-202; 8-4-311; 8-5-205; § 8-6-207 or as otherwise pro-

vided by law.

"(b) The authorized administrative hearing officer shall be selected by and hired by the Commission and shall be independent of and not an employee of the Department of Pollution Control and Ecology. Suitable office space and equipment shall be provided the administrative hearing officer and Commission Secretary to perform the duties of the respective positions. The office space shall be at a location other than the office of the Department of Pollution Control and Ecology.

"(c) The Commission Secretary, now an employee of the Department of Pollution Control and Ecology, shall become a full-

time employee of the Commission and shall perform such duties as assigned by the Commission including assistance to the administrative hearing officer. The position so transferred shall be at Grade 17."

Acts 1993, No. 1264, § 1, provided: "The General Assembly desires to provide protection of the human health and the environment for the citizens of the state. In providing for such protection, the General Assembly recognizes that environmental

rules and regulations should have a sound scientific and economic basis. Thus, the General Assembly finds that, prior to the promulgation of any environmental rule or regulation by the state that is more stringent than federal requirements, the state must consider the economic impact and environmental benefit such rule or regulation will have on the citizens of the state of Arkansas prior to such promulgation."

### **8-1-204. Administrative hearing officer.**

(a) The Arkansas Pollution Control and Ecology Commission shall employ a full-time administrative hearing officer to perform such functions and duties as the commission shall direct and, in particular, to advise the commission on matters of law and procedure that may arise during the conduct of commission duties and responsibilities as outlined in §§ 8-1-203, 8-4-201, 8-4-202, 8-4-311, 8-5-205, and 8-6-207, or as otherwise provided by law.

(b) The administrative hearing officer shall be selected and hired by the commission and shall be independent of and not an employee of the Arkansas Department of Environmental Quality.

(c) The expenses of the administrative hearing officer shall be paid from the Arkansas Department of Environmental Quality Fee Trust Fund or from other sources as provided by law.

(d) The office space for the hearing officer shall be at a location other than the offices of the department.

(e) The administrative assistant II shall be supervised by and provide assistance to the administrative hearing officer authorized in this section.

(f) The disbursing officer of the department shall disburse the funds appropriated for the commission's hearing officer.

**History.** Acts 1995, No. 1191, § 36; subchapter" in §§ 8-1-201 — 8-1-203 may  
1999, No. 1164, § 9; 2003, No. 51, § 1. not apply to this section which was enacted subsequently.

**A.C.R.C. Notes.** References to "this

### **8-1-205. Mercury Task Force recommendations — Implementation.**

The Arkansas Department of Environmental Quality is hereby authorized to enter into agreements or contracts with the Arkansas State Game and Fish Commission or other entities as necessary to implement the recommendations of the Mercury Task Force.

**History.** Acts 1995, No. 1191, § 35; subchapter" in §§ 8-1-201 — 8-1-203 may  
1999, No. 1164, § 10. not apply to this section which was enacted subsequently.

**A.C.R.C. Notes.** References to "this



SUBCHAPTER 3 — ENVIRONMENTAL AUDIT REPORTS

SECTION.	SECTION.
8-1-301. Purpose.	8-1-308. [Repealed.]
8-1-302. Definitions.	8-1-309. Audit privilege reserved for administrative or civil proceedings.
8-1-303. Privilege.	8-1-310. Burden of proof.
8-1-304. Waiver.	8-1-311. Partial disclosure.
8-1-305. Exceptions.	8-1-312. Scope.
8-1-306. Stipulation.	
8-1-307. Disclosure in civil or administrative proceeding.	

**Effective Dates.** Acts 1999, No. 871, § 11: Mar. 25, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that immediate implementation of these statutes is necessary in order to ensure that the state meets immediate Environmental Protection Agency requirements for authorization and delegation of federal programs to the State of Arkansas. Therefore, an emergency is declared to exist and this act being immedi-

ately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

8-1-301. Purpose.

The General Assembly hereby finds and declares that protection of the environment is enhanced by the public's voluntary compliance with environmental laws and that the public will benefit from incentives to identify and remedy environmental compliance issues. It is further declared that limited expansion of the protection against disclosure will encourage such voluntary compliance and improve environmental quality and that the voluntary provisions of this subchapter will not inhibit the exercise of the regulatory authority by those entrusted with protecting our environment.

**History.** Acts 1995, No. 350, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Jones, Wright, Jr., & Ternes, Environmental	Compliance Audits: The Arkansas Experience, 21 U. Ark. Little Rock L. Rev. 191.
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8-1-302. Definitions.

As used in this subchapter:  
(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Director" means the Director of the Arkansas Department of Environmental Quality;

(3)(A) "Environmental audit" means a voluntary, internal, and comprehensive evaluation of one (1) or more facilities or an activity at one (1) or more facilities regulated under this chapter, or federal, regional, or local counterparts or extensions thereof, or of management systems related to that facility or activity, that is designed to identify and prevent noncompliance and to improve compliance with statutory or regulatory requirements.

(B) An environmental audit may be conducted by the owner or operator, by the owner's or operator's employees, or by independent contractors; and

(4) "Environmental audit report" means a set of documents prepared as a result of an environmental audit, and labeled "ENVIRONMENTAL AUDIT REPORT: PRIVILEGED DOCUMENT", that may include:

(A) Field notes, records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, and surveys collected or developed for the primary purpose of preparing an environmental audit;

(B) An audit report prepared by the auditor that includes:

- (i) The scope of the audit;
- (ii) The information gained in the audit;
- (iii) Conclusions and recommendations; and
- (iv) Exhibits and appendices;

(C) Memoranda and documents analyzing a portion of or all of the audit report and discussing implementation issues; and

(D) An implementation plan that addresses correcting past compliance, improving current compliance, and preventing future non-compliance.

**History.** Acts 1995, No. 350, § 1; 1999, No. 1164, § 11.

### **8-1-303. Privilege.**

(a) In order to encourage owners and operators of facilities and persons conducting other activities regulated under this chapter or its federal counterparts or extensions, both to conduct voluntary internal environmental audits of their compliance programs and management systems and to assess and improve compliance with statutory and regulatory requirements, an environmental audit privilege is created to protect the confidentiality of communications relating to voluntary internal environmental audits.

(b) An environmental audit report shall be privileged and shall not be admissible as evidence in any civil or administrative legal action, including enforcement actions.

**History.** Acts 1995, No. 350, § 1; 1999, No. 871, § 1.

### **8-1-304. Waiver.**

(a) The privilege described in § 8-1-303 does not apply to the extent that:

(1) It is waived expressly by the owner or operator of the facility that prepared or caused to be prepared the environmental audit report;

(2) The owner or operator of a facility or person conducting an activity seeks to introduce an environmental audit report as evidence; and

(3) The owner or operator of a facility authorizes the disclosure of the environmental audit report to any party, except when:

(A) Disclosure is made under the terms of a confidentiality agreement between the owner or operator of a facility and:

(i) A potential purchaser of the facility; or

(ii) A customer, lending institution, or insurance company with an existing or proposed relationship with the facility;

(B) Disclosure is made under the terms of a confidentiality agreement between government officials and the owner or operator of a facility; or

(C) Disclosure is made to an independent contractor retained by the owner or operator of the facility for the purpose of identifying noncompliance with statutory or regulatory requirements and assisting the owner or operator in achieving compliance with reasonable diligence.

(b) The waiver of the privilege described in § 8-1-303 may be for part or all of the environmental audit report, and the waiver of privilege extends only to that part of the environmental audit report expressly waived by the owner or operator of a facility.

**History.** Acts 1995, No. 350, § 1.

### **8-1-305. Exceptions.**

The privilege described in § 8-1-303 does not apply to the following:

(1) Documents, communications, data, reports, or other information that must be collected, developed, maintained, reported, or otherwise made available to the public or a regulatory agency under:

(A) Federal or state law or extensions thereof;

(B) A rule or standard adopted by the Arkansas Pollution Control and Ecology Commission;

(C) A determination, a permit, or an order made or issued by the commission or the Director of the Arkansas Department of Environmental Quality; or

(D) Any other federal, state, or local law, permit, or order;

(2) Information obtained by observation, sampling, or monitoring by any regulatory agency; and



(3) Information obtained from a source independent of the environmental audit.

**History.** Acts 1995, No. 350, § 1; 1999, No. 871, § 2.

### **8-1-306. Stipulation.**

The parties to a legal action may at any time stipulate to the entry of an order that directs that specific information contained in an environmental audit report is or is not subject to the privilege provided under § 8-1-303.

**History.** Acts 1995, No. 350, § 1.

### **8-1-307. Disclosure in civil or administrative proceeding.**

(a) In a civil or administrative proceeding, a court of record or administrative tribunal, after an in-camera review, shall require disclosure of material for which the privilege described in § 8-1-303 is asserted if the court or administrative tribunal determines one (1) of the following:

- (1) The privilege is asserted for a fraudulent purpose;
- (2) The material is not subject to the privilege;
- (3) The material is subject to the privilege and the material shows evidence of noncompliance with:

(A) Federal or state law or extensions of such statutes;

(B) Any rule or regulation adopted by the Arkansas Pollution Control and Ecology Commission; or

(C) A determination, permit, or order issued by the commission or the Director of the Arkansas Department of Environmental Quality; and

- (4) The person claiming the privilege did not promptly initiate and pursue appropriate efforts to achieve compliance with reasonable diligence.

(b)(1) If the noncompliance described in subdivision (a)(3) of this section constitutes a failure to obtain a required permit, the person is deemed to have made appropriate efforts to achieve compliance if the person filed an application for the required permit not later than ninety (90) days after the date the person became aware of the noncompliance.

(2)(A) In the event additional time is required to prepare a permit application, the person shall, within ninety (90) days, submit a schedule to the Arkansas Department of Environmental Quality that identifies the activities required to complete the application, and, if the schedule is acceptable to the department, the filing of the application pursuant to the submitted schedule shall constitute reasonable diligence to achieve compliance for a failure to obtain a required permit.

(B) Nothing in this section authorizes a facility to operate without the proper permit having been issued.

**History.** Acts 1995, No. 350, § 1; 1999, No. 871, § 3; 1999, No. 1164, § 12.

### **8-1-308. [Repealed.]**

**A.C.R.C. Notes.** Pursuant to §§ 1-2-207 and 1-2-303, the repeal of this section by Acts 1999, No. 871, § 4 is deemed to supersede its amendment by Acts 1999, No. 1164, § 13.

**Publisher's Notes.** This section, concerning disclosure in a criminal proceeding, was repealed by Acts 1999, No. 871, § 4. The section was derived from Acts 1995, No. 350, § 1; 1999, No. 1164, § 13.

### **8-1-309. Audit privilege reserved for administrative or civil proceedings.**

The privilege created by § 8-1-303 does not apply to criminal investigations or proceedings. When an environmental audit report is obtained, reviewed, or used in a criminal proceeding, the privilege created by this section applicable to administrative or civil proceedings is not waived or eliminated.

**History.** Acts 1995, No. 350, § 1; 1999, No. 871, § 5.

### **8-1-310. Burden of proof.**

(a) A party asserting the environmental audit privilege under § 8-1-303 has the burden of proving the privilege, including if there is evidence of noncompliance with federal or state law or extensions thereof, and proof that appropriate efforts to achieve compliance were promptly initiated and pursued with reasonable diligence.

(b) A party seeking disclosure under § 8-1-307 has the burden of proving the privilege is asserted for a fraudulent purpose.

**History.** Acts 1995, No. 350, § 1; 1999, No. 871, § 6.

### **8-1-311. Partial disclosure.**

Upon making a determination under § 8-1-307, the court of record or administrative tribunal may compel disclosure of only those parts of an environmental audit report that are relevant to issues in dispute in the proceeding.

**History.** Acts 1995, No. 350, § 1; 1999, No. 871, § 7.

### **8-1-312. Scope.**

Nothing in this subchapter may limit, waive, or abrogate:

(1) The scope of any statutory or common law privilege, including the work product doctrine and the attorney-client privilege; or

(2) The rights of the public as provided in the Freedom of Information Act of 1967, § 25-19-101 et seq.

**History.** Acts 1995, No. 350, § 1; 2009, No. 1199, § 3.

**Amendments.** The 2009 amendment

redesignated the section, and made related and minor stylistic changes.

## CHAPTER 2

### ENVIRONMENTAL TESTING

#### SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]

2. STATE ENVIRONMENTAL LABORATORY CERTIFICATION PROGRAM ACT.

**A.C.R.C. Notes.** Acts 1997, No. 1219, § 1, provided: "Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public's perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State's regulatory functions concerning protection of the environment."

Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'." (a) Effective March 31, 1999, the 'Arkansas

Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

#### SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

#### SUBCHAPTER 2 — STATE ENVIRONMENTAL LABORATORY CERTIFICATION PROGRAM ACT

##### SECTION.

8-2-201. Title.

8-2-202. Purpose.

8-2-203. Definitions.

8-2-204. Powers and duties of department and commission.

8-2-205. Procedure for issuance of rules or regulations, appeals, hearings, etc.

##### SECTION.

8-2-206. Certification — Criteria and procedure.

8-2-207. Certification — Duration — Renewal.

8-2-208. Certification — Revocation.

8-2-209. Fees.



**8-2-201. Title.**

This subchapter may be called the "State Environmental Laboratory Certification Program Act".

**History.** Acts 1985, No. 876, § 1; A.S.A. 1947, § 82-1993.

**8-2-202. Purpose.**

It is the purpose of this subchapter to authorize the Arkansas Department of Environmental Quality to establish and administer an environmental laboratory certification program so that laboratories that submit data and analyses to the department may be certified by the department as having demonstrated acceptable compliance with laboratory standards so that the validity of scientific data submitted to the department may be further assured.

**History.** Acts 1985, No. 876, § 2; A.S.A. § 1; 1993, No. 440, § 1; 1999, No. 1164, 1947, § 82-1993.1; Acts 1993, No. 322, § 14.

**8-2-203. Definitions.**

As used in this subchapter:

(1) "Acceptable results" means results within limits determined on the basis of statistical procedures as prescribed by the Arkansas Department of Environmental Quality;

(2) "Certificate" means a document issued by the department showing the parameters for which a laboratory has received certification;

(3) "Commission" means the Arkansas Pollution Control and Ecology Commission or its successor;

(4) "Consulting laboratory" means a laboratory, as defined in subdivision (7) of this section, that performs analyses for any person other than itself, and does not include laboratories that are wholly owned by the person for whom the analyses are performed;

(5) "Department" means the Arkansas Department of Environmental Quality;

(6) "Evaluation" means a review of the quality control and quality assurance procedures, recordkeeping, reporting procedures, methodology, and analytical techniques of a laboratory for measuring or establishing specific parameters;

(7) "Laboratory" means any facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, or soil or subsoil materials or that performs any other analyses related to environmental quality evaluations required by the department or which will be submitted to the department, except that evaluations to determine the engineering properties related to soil mechanics shall not be included herein;

(8) "Parameter" means the characteristics of a laboratory sample determined by an analytic laboratory testing procedure;

(9) "Performance audit sample" means a sample intended for laboratory analysis in which the concentrations of the constituents are known only to the department and that is used in a test procedure to determine a laboratory's analytic, quality control, and quality assurance precision and accuracy;

(10) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, municipal, state, or federal government or agency, or any other legal entity, however organized; and

(11) "Program" means the State Environmental Laboratory Certification Program.

**History.** Acts 1985, No. 876, § 3; A.S.A. 1947, § 82-1993.2; Acts 1993, No. 322, § 2; 1993, No. 440, § 2; 1999, No. 1164, § 15.

**Publisher's Notes.** Acts 1973, No. 262, § 2, which amended Acts 1949, No. 472, § 2(b), referred to a Commission on Pollution Control and Ecology, which is probably the same commission as the Arkan-

sas Pollution Control Commission created by Acts 1949, No. 472, § 2(a) as amended. However, Acts 1973, No. 262 did not change the name of the commission created in Acts 1949, No. 472, § 2(a) as Acts 1985, No. 930, § 1, in part, amended Acts 1949, No. 472, § 2, to create an Arkansas Pollution Control and Ecology Commission.

## 8-2-204. Powers and duties of department and commission.

(a) The Arkansas Department of Environmental Quality shall have the following powers and duties under this subchapter:

(1) To establish and administer the State Environmental Laboratory Certification Program for laboratories applying for certification by the department;

(2) To enforce the provisions of this subchapter and all laws, rules, and regulations relating to the program and to environmental testing;

(3) To issue, deny, revoke, or suspend the certification of a laboratory for cause; and

(4) To refuse to accept analytical results from a laboratory when the department reasonably determines that the results do not meet reasonable criteria for validation, regardless of whether the laboratory is certified.

(b) The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties under this subchapter:

(1) To establish by regulation reasonable fees for the certification procedures set forth in this subchapter and to cover the expenses of administering the program; and

(2) To promulgate, as may be necessary, regulations to effect the purpose and administration of the program, including, but not limited to, provisions governing applications for certification, modification, and renewal of certification and recertification after revocation.

**History.** Acts 1985, No. 876, § 4; A.S.A. 1947, § 82-1993.3; Acts 1993, No. 322, § 3; 1993, No. 440, § 3.

### **8-2-205. Procedure for issuance of rules or regulations, appeals, hearings, etc.**

(a) Any person that violates any provision of this chapter or of any rule, regulation, or order issued pursuant to this chapter or that commits an unlawful act under this chapter shall be subject to the same penalty and enforcement provisions as are contained in the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

(b) Except as otherwise provided in this chapter, the procedure of the Arkansas Pollution Control and Ecology Commission for issuance of any rules and regulations, conduct of hearings, notice, review of actions on certificates, right of appeal, presumptions, finality of actions, and related matters shall be as provided in Part I of the Arkansas Water and Air Pollution Control Act, §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, including, without limitation, §§ 8-4-202, 8-4-205 — 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229.

**History.** Acts 1985, No. 876, § 8; A.S.A. 1947, § 82-1993.7; Acts 1993, No. 322, § 4; 1993, No. 440, § 4.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, this section is set out above as amended by identical Acts 1993, Nos. 322 and 440. This section was also amended by identical Acts 1993, Nos. 163 and 165, § 8, to read as follows: "(a) The procedure of the Arkansas Pollution Control and Ecology Commission for issuance of any rules and regulations, conduct of hearings, notice, review of actions on certificates, right of appeal, presumptions, finality of actions, and related matters shall be as provided in Part I of the Arkansas

Water and Air Pollution Control Act, as amended, §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, including, without limitation, §§ 8-4-202, 8-4-210, 8-4-212 — 8-4-214, 8-4-218 — 8-4-229.

"(b) Any permittee or person subject to regulation may petition the commission for a declaratory order as to the applicability of any rule, statute, permit, or order enforced by the department or the commission. Such petitions shall be processed in the same manner as appeals under the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218 — 8-4-229. These declaratory orders shall have the same status as an order of the commission."

### **8-2-206. Certification — Criteria and procedure.**

(a)(1)(A) All consulting laboratories performing analyses for which results are to be submitted to the Arkansas Department of Environmental Quality shall obtain a laboratory certification under this subchapter.

(B) The department, in its sole discretion, may refuse to accept results of analyses performed by a consulting laboratory that does not hold a certification pursuant to the program for the reason that the laboratory is not certified.

(2) Certification for laboratories other than consulting laboratories shall not be mandatory.

(b) Applications for certification shall be made in the form and manner established by the department.

(c) Upon receipt of an application for certification, the department shall evaluate and act upon the application in accordance with the following procedures and criteria:

(1)(A) The laboratory must successfully complete an evaluation.



(B) The department shall establish evaluation criteria on proper analytical, quality assurance, recordkeeping, and reporting methods and procedures and facilities, equipment, and personnel requirements; and

(2)(A) The laboratory must submit to the department acceptable results from its analysis of performance audit samples for the specific parameters selected for certification.

(B) The department shall make available to the applicant laboratory performance audit samples for the selected parameters.

(C) In accordance with procedures required by the department, the laboratory shall return the analyzed results to the department, and the department shall determine if the laboratory has achieved acceptable results in the analysis of each sample.

(d) Upon completion of the laboratory evaluation and the review of the audit sample results, the department shall notify the laboratory of its determination to award or deny certification.

(e)(1) If the adequacy of the laboratory's capability and its adequacy have been sufficiently established to the satisfaction of the department, a certificate will be issued to the laboratory for the evaluated categories of parameters.

(2) If certification is denied, the department shall set forth, in writing, the reasons for denial.

**History.** Acts 1985, No. 876, § 5; A.S.A. 1947, § 82-1993.4; Acts 1993, No. 322, § 5; 1993, No. 440, § 5.

### **8-2-207. Certification — Duration — Renewal.**

(a) A certificate shall be effective for a period of one (1) year from the date of issuance, after which time the certificate will lapse.

(b) Certification may be renewed for additional periods of one (1) year's duration upon application for renewal made to the Arkansas Department of Environmental Quality.

**History.** Acts 1985, No. 876, § 5; A.S.A. 1947, § 82-1993.4.

### **8-2-208. Certification — Revocation.**

(a) Once certified, a laboratory's certification may be revoked or suspended by the Arkansas Department of Environmental Quality:

(1) For knowing falsification of any data submitted to the department or any data related to laboratory analysis;

(2) For knowingly making any false statement, representation, or certification in any application, record, report, plan, or other document issued by or sent to the department or related to laboratory analysis;

(3) For knowing misrepresentation of procedures or documentation used in sampling or laboratory analysis;

(4) If the laboratory in question is no longer entitled to the certification by reason of its failure to comply with the proper analytical, quality assurance, recordkeeping, and reporting methods and procedures and the facilities, equipment, and personnel requirements on which the certification was issued; or

(5) If the laboratory demonstrably fails to achieve acceptable results for specific parameters for which it has been certified.

(b) It shall be unlawful for any person:

(1) To knowingly falsify any data submitted to the department or any data related to laboratory analysis;

(2) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document issued by or sent to the department or related to laboratory analysis;

(3) To knowingly misrepresent sampling procedures or methods used in laboratory analysis;

(4) To knowingly render inaccurate any certification issued under this subchapter; or

(5) While knowing that a person is not certified pursuant to the program, to knowingly represent that that person is so certified.

**History.** Acts 1985, No. 876, § 6; A.S.A. 1947, § 82-1993.5; Acts 1993, No. 322, § 6; 1993, No. 440, § 6.

## 8-2-209. Fees.

(a)(1) The Arkansas Department of Environmental Quality shall be authorized to assess reasonable fees to participating laboratories for the administrative costs of the State Environmental Laboratory Certification Program.

(2) The costs will include, but are not limited to, the expense of conducting evaluations and the procurement of performance audit samples.

(b) Fees may be assessed at the time of initial application, renewal application, application for modification, or at the time a certificate is awarded.

(c) Following a public hearing and based upon a record calculating the reasonable administrative costs of conducting certification procedures set forth herein and costs of enforcing the terms and conditions of certificates, the Arkansas Pollution Control and Ecology Commission may establish reasonable fees for initial issuance, annual review, and modification of certificates authorized by this subchapter.

**History.** Acts 1985, No. 876, § 7; A.S.A. 1947, § 82-1993.6; Acts 1993, No. 322, § 7; 1993, No. 440, § 7.

## CHAPTER 3

### WATER AND AIR POLLUTION GENERALLY

**SECTION.**

8-3-101. Designation of air quality areas.

8-3-102. Ambient air quality standards  
— Hydrogen sulfide.**SECTION.**

8-3-103. Hydrogen sulfide emissions.

**A.C.R.C. Notes.** Acts 1997, No. 1219, § 1, provided: “Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public’s perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State’s regulatory functions concerning protection of the environment.”

Acts 1997, No. 1219, § 2, provided: “‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.” (a) Effective March 31, 1999, the ‘Arkansas

Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

#### 8-3-101. Designation of air quality areas.

No area within Arkansas shall be redesignated by the state for the purposes of permitting under the Prevention of Significant Deterioration (PSD) of Air Quality requirements except by an act of the General Assembly.

**History.** Acts 1985, No. 237, § 1; A.S.A. 1947, § 82-1941.1; Acts 1999, No. 114, § 1.

#### 8-3-102. Ambient air quality standards — Hydrogen sulfide.

(a) After review of scientific literature and similar standards in other states, the Arkansas Pollution Control and Ecology Commission shall promulgate, through procedures set out in § 8-4-202, ambient air quality standards or other appropriate regulatory controls that will protect the public health and the environment from the emission of hydrogen sulfide.



(b)(1) Before the commission proposes an ambient standard or regulatory mechanism concerning hydrogen sulfide that will result in more stringent or restrictive control provisions than are currently provided by Arkansas Department of Environmental Quality permitting practices, the commission shall direct the department to prepare, with the assistance and cooperation of state agencies with appropriate expertise, an economic impact and environmental benefit analysis justifying more stringent or restrictive operating conditions.

(2) The economic impact and environmental benefit analysis shall include without limitation the:

(A) Benefit to the public health;

(B) Preservation of environmental quality; and

(C) Cost to the regulated community and the department.

(3) The conclusions of an economic impact and environmental benefit analysis shall be included in any public notice of the proposed rulemaking and shall be subject to public comment.

**History.** Acts 1997, No. 856, § 1; 2009, No. 1199, § 4.

**Amendments.** The 2009 amendment subdivided the section; substituted “an economic impact and environmental benefit” for “a cost/benefit” in (b)(1); inserted

“economic impact and environmental benefit” in (b)(2); substituted “an economic impact and environmental benefit” for “this” in (b)(3); and made related and minor stylistic changes.

### 8-3-103. Hydrogen sulfide emissions.

(a) AMBIENT CONCENTRATION STANDARD.

(1) Except as provided in subsection (d) of this section, no person shall cause or permit emissions from any facility that result in predicted ambient hydrogen sulfide concentrations at any place beyond the facility’s perimeter property boundary greater than eighty parts per billion (80 PPB) for any eight-hour averaging period for residential areas, or greater than one hundred parts per billion (100 PPB) for any eight-hour averaging period for nonresidential areas.

(2) No person shall cause or permit emissions from any facility that result in actual ambient hydrogen sulfide concentrations at any place beyond the facility’s perimeter property boundary greater than twenty parts per million (20 ppm) for any five-minute averaging period.

(b) METHOD OF PREDICTION. All estimates of ambient concentrations required under this section shall be performed by the Arkansas Department of Environmental Quality or performed by the facility and approved by the department based on the facility’s potential to emit hydrogen sulfide, the applicable air quality models, databases, and other requirements specified in the “Guideline on Air Quality Models (Revised)” (1986), supplement A (1987) and supplement B (1993).

(c) COMPLIANCE PLAN.

(1) In the event the standard is predicted to be exceeded, the facility or facilities whose emissions are found to contribute to the excess shall be given a reasonable period of time to undertake measures to demonstrate compliance, such as a site-specific risk assessment that demon-

strates that the emissions do not pose a risk to human health at the nearest public receptor, ambient monitoring, that demonstrates that the standard is not being exceeded, or undertaking emission reduction measures to reduce emissions of hydrogen sulfide such that the standard will not be exceeded.

(2) The compliance measures and schedule of compliance shall be stated in an enforceable settlement agreement or permit modification or, if the facility does not have an existing permit, an enforcement order.

(d) CONTROL TECHNOLOGY REQUIREMENTS.

(1) GENERAL REQUIREMENTS. Rather than demonstrate compliance with the ambient limit contained in subsection (a) of this section, a facility may elect to install and operate or continue to operate appropriate control technology that addresses hydrogen sulfide emissions for that source or source category.

(2) DETERMINATION OF APPROPRIATE CONTROL TECHNOLOGY.

(A) For purposes of this section, "appropriate hydrogen sulfide control technology" means control technology, operational practices, or some combination thereof, which will result in the lowest emissions of hydrogen sulfide that a particular facility is reasonably capable of meeting, considering technological and economic feasibility.

(B) Compliance with all applicable portions of the following technology standards, in accordance with the schedule set forth in such standards, shall be deemed to be compliance with appropriate hydrogen sulfide control technology:

(i) Maximum Achievable Control Technology Standards issued pursuant to section 112 of the Clean Air Act, promulgated at 40 CFR Part 63, when compliance with such standards will reduce hydrogen sulfide emissions;

(ii) Standards of Performance for New Stationary Sources, promulgated at 40 CFR Part 60:

(a) Subpart J, Standards of Performance for Petroleum Refineries;

(b) Subpart BB, Standards of Performance for Kraft Paper Mills;

(c) Subpart VV, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry;

(d) Subpart GGG, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries;

(e) Subpart KKK, Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants; or

(f) Subpart LLL, Standards of Performance for Onshore Natural Gas Processing; or

(iii) National Emission Standards for Hazardous Air Pollutants under Title III of the Clean Air Act and standards of performance promulgated pursuant to section 111(d) of the Clean Air Act, when compliance with such standards will reduce hydrogen sulfide emissions.

(C) A facility that is not subject to one (1) of the technology limits listed in subdivision (d)(2)(B) of this section and that wishes to apply

appropriate hydrogen sulfide control technology may apply to the department for a determination of appropriateness at any time, but no later than ninety (90) days after a determination that the ambient standard has been exceeded. The application shall be made on such forms and contain such information as the department may require and shall include a reasonable time schedule for implementation. When making a determination of appropriateness, the department shall follow the procedures used for making permitting decisions, including public participation requirements.

(D) The ambient standard shall not apply to the following facilities:

(i) Natural gas pipelines and related facilities that do not transmit gas with a concentration of hydrogen sulfide in excess of four parts per million (4 ppm);

(ii) Natural gas gathering and production pipelines and related facilities that do not transmit gas with a concentration of hydrogen sulfide in excess of thirty parts per million (30 ppm);

(iii) Brine pipelines that carry natural gas as a byproduct of the brine;

(iv) Wastewater treatment facilities; and

(v) Oil and gas drilling and production operations and facilities from the wellhead to the custodial transfer meter as that term is defined by law.

(e) The Oil and Gas Commission is hereby delegated the authority to set hydrogen sulfide standards for oil and gas drilling and production facilities from the wellhead to the custodial transfer meter.

**History.** Acts 1999, No. 1136, § 1.

## CHAPTER 4

# ARKANSAS WATER AND AIR POLLUTION CONTROL ACT

### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. WATER POLLUTION.
3. AIR POLLUTION.
4. LEAD-BASED PAINT-HAZARD ACT. [REPEALED.]

**A.C.R.C. Notes.** References to “this chapter” in §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, and 8-4-301 — 8-4-314 may not apply to § 8-4-107, which was enacted subsequently.

Acts 1997, No. 1219, § 1, provided: “Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology

Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public’s perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State’s regulatory functions



concerning protection of the environment."

Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'.

"(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control &

Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

References to "this chapter" in subchapters 1 and 3 and §§ 8-4-201 to 8-4-230 may not apply to § 8-4-231 which was enacted subsequently.

**Publisher's Notes.** Acts 1981, No. 523, § 7, provided that this act shall not repeal Acts 1949, No. 472 (§ 8-4-101 et seq.), either in whole or in part.

## RESEARCH REFERENCES

**Am. Jur.** 61A Am. Jur. 2d, Pollution Control, § 1 et seq.

**Ark. L. Notes.** Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology Department and Commission, 1988 Ark. L. Notes 23.

**Ark. L. Rev.** Environmental Law — Third Party Beneficiary Contract as a New Weapon in the Continuing Pollution Fight, 26 Ark. L. Rev. 408.

Lex Aquae Arkansas, 27 Ark. L. Rev. 429.

**C.J.S.** 39A C.J.S., § 91 et seq.

**U. Ark. Little Rock L.J.** Wright, In Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Environment and Small Business, 13 U. Ark. Little Rock L.J. 417.

Wright, Jr. & Thomas III, The Federal/Arkansas Water Pollution Control Programs: Past, Present, and Future, 23 U. Ark. Little Rock L. Rev. 541 (Spring, 2001).

## CASE NOTES

### ANALYSIS

Causes of Action.

Statute of Limitations.

### Causes of Action.

The legislature intended that the State be able to bring claims for natural resource damages under this chapter and under §§ 8-6-201 et seq. and 8-7-201 et seq. Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

### Statute of Limitations.

The environmental protection provisions found in this chapter and §§ 8-6-201 et seq. and 8-7-201 et seq., are regulatory and protective rather than penal, and therefore the statute of limitations for penal actions, § 16-56-108, does not apply. Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

8-4-101. Title.

8-4-102. Definitions.

8-4-103. Criminal, civil, and administrative penalties.

### SECTION.

8-4-104. Arkansas Pollution Control and Ecology Commission — Members.

8-4-105. Director of the Arkansas Depart-

## SECTION.

ment of Environmental Quality.

8-4-106. Technical and other services and public assistance.

## SECTION.

8-4-107. Prosecution of public nuisance actions.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 8-4-101 — 8-4-106 may not apply to § 8-4-107 which was enacted subsequently.

**Publisher's Notes.** Acts 1965, No. 183, § 6, provided that Acts 1949, No. 472, §§ 1-12 (subchapters 1 and 2 of this chapter) were designated as comprising "Part 1, Water Pollution."

**Cross References.** County and municipal financing of pollution control facilities, § 14-267-101 et seq.

Permit fees for air, water, and solid waste pollution control activities, § 8-1-101 et seq.

**Effective Dates.** Acts 1949, No. 472, § 12: approved Mar. 29, 1949. Emergency clause provided: "Whereas, the pollution of the waters and the streams in the State of Arkansas from sewage, industrial waste, garbage, municipal refuse, and many other sources has created and is creating a hazard and danger to the public health of the people of the State of Arkansas, and is endangering the fish and other wildlife of the State of Arkansas; and, whereas, improper and inadequate sewer systems and disposal plants and treatment works cannot be adequately inspected, checked, and supervised under existing laws; and, whereas, present laws to prevent the pollution of the streams and to protect the health and general welfare of the people are inadequate and there are overlapping authorities as to control and regulations; and whereas, the continuance of such conditions presents an immediate and continuing threat and hazard to the public peace, health, and safety, therefore an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage."

Acts 1953, No. 232, § 2: Mar. 6, 1953. Emergency clause provided: "It appearing to the Legislature that the membership of the Water Pollution Control Commission as presently constituted does not adequately give representation to the other

state agencies interested and informed in matters of water pollution control, and it appearing that there be an immediate public need for such representation, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1961, No. 120, § 9: Feb. 21, 1961. Emergency clause provided: "Whereas, operating experience under Act 472 of 1949 has revealed ambiguous and inadequate provisions which the foregoing amendments will eliminate and correct, and whereas a continuation of said ambiguous and inadequate provisions would be inimical to the proper control and abatement of water pollution and to the public peace, health, and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from the date of its approval."

Acts 1965, No. 183, § 8: Mar. 10, 1965. Emergency clause provided: "Whereas, the pollution of the air resources of the State of Arkansas by air contaminants can create serious hazards to the public health and welfare of the people; and, whereas, it is the public policy of the state to maintain such a reasonable degree of purity of the air to the end that the least possible injury shall be done to human, plant or animal life or to property, and to maintain public enjoyment of the state's natural resources, consistent with the economic and industrial well-being of the state; and, whereas, existing laws to prevent, control, and abate air pollution are inadequate to protect the health and general welfare of the people; now, therefore, an emergency is hereby declared to exist and this act shall be in full force and effect from the date of its approval."

Acts 1973, No. 262, § 13: Mar. 9, 1973. Emergency clause provided: "It being found that the existing state laws relating to water pollution control do not contain



adequate legal authority for the state to continue to administer its own permit program for discharges into navigable waters within the state in lieu of that of the Federal Environmental Protection Agency and it being desirable that such authority be provided, an emergency is, therefore, declared hereby to exist and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 743, § 11: Apr. 3, 1975. Emergency clause provided: "It being found that the existing state laws relating to water pollution control do not contain adequate legal authority for the state to continue to administer its own permit program for discharges into navigable waters within the state in lieu of that of the Federal Environmental Protection Agency and it being desirable that such authority be provided, an emergency is, therefore, declared hereby to exist and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1057, § 9: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the 78th General Assembly that the sanctions imposed by current Arkansas law for environmental violations are among the least stringent in the nation. Thus, current law is inadequate to deter environmental violations, and in fact extends an implicit invitation to irresponsible industries. Protection of the environmental integrity of this state is essential to protect the public's health and economic well-being. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is

hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 1824, § 20: July 1, 2005. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds and determines that the decision of the Arkansas Supreme Court in *Arkansas Department of Environmental Quality v. Brighton Corp.* 352 Ark. 396, 102 S.W.3d 458 (2003), has raised questions regarding the factual proof required to establish a claim for cost recovery under the Arkansas Remedial Action Trust Fund Act and regarding the retroactivity of the statute. The General Assembly further finds and determines that the doubts raised by the decision in the Brighton case have created substantial uncertainty regarding the enforcement authority of the Arkansas Department of Environmental Quality and the rights and responsibilities of private parties under the Arkansas Remedial Action Trust Fund Act, all of which require urgent resolution. Therefore, an emergency is declared to exist; and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005, and shall apply retroactively."

## CASE NOTES

### Constitutionality.

There is a rational basis for distinguishing between air pollution attributable to commercial incinerators for burning waste materials, on the one hand, and

agricultural clearing and residential fireplaces and grills on the other; therefore, the Water and Air Pollution Control Act, does not deny equal protection of the law under Ark. Const., Art. 2, § 18 and the



Fourteenth Amendment of the United States Constitution. J.W. Black Lumber Co. v. Arkansas Dep't of Pollution Control & Ecology, 290 Ark. 170, 717 S.W.2d 807 (1986).

### 8-4-101. Title.

This chapter may be cited as the "Arkansas Water and Air Pollution Control Act".

**History.** Acts 1949, No. 472 [Part 1], § 11; 1965, No. 183, § 5; A.S.A. 1947, § 82-1901.

### RESEARCH REFERENCES

**Ark. L. Rev.** Wright & Henry, The Arkansas Air Pollution Control Program: Past, Present and Future. 51 Ark. L. Rev. 227.

### CASE NOTES

**Cited:** Arkansas Pollution Control Comm'n v. Coyne, 252 Ark. 792, 481 S.W.2d 322 (1972); Arkansas Wildlife Fed'n v. Bekaert Corp., 791 F. Supp. 769 (W.D. Ark. 1992).

### 8-4-102. Definitions.

As used in this chapter:

(1) "Discharge into the waters of the state" means a discharge of any wastes in any manner that directly or indirectly permits such wastes to reach any of the waters of the state;

(2) "Disposal system" means a system for disposing of sewage, industrial waste, and other wastes and includes sewer systems and treatment works;

(3) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, mining, manufacturing, trade, or business or from the development of any natural resources;

(4) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, oil, tar chemicals, and all other organic or inorganic substances, not including sewage or industrial waste that may be discharged into the waters of the state. "Any wastes" and "pollutants" include sewage, industrial wastes, or other wastes;

(5) "Person" means any state agency, municipality, governmental subdivision of the state or the United States, public or private corporation, individual, partnership, association, or other entity;

(6) "Pollution" means such contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous, or solid substance in any waters of the state as will, or is likely to, render the waters harmful,

detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish, or other aquatic life;

(7) "Sewage" means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the excrementitious or other discharge from the bodies of humans or animals, together with such groundwater infiltration and surface water as may be present;

(8) "Sewer system" means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, which are used for conducting sewage or industrial waste or other wastes to a point of disposal;

(9) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works not specifically mentioned in this section, which is installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes; and

(10) "Waters of the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.

**History.** Acts 1949, No. 472 [Part 1], § 1; 1961, No. 120, §§ 1, 2; 1975, No. 743, §§ 2, 3; A.S.A. 1947, § 82-1902; Acts 1993, No. 163, § 9; 1993, No. 165, § 9.

**Publisher's Notes.** Acts 1961, No. 120, § 8, which amended Acts 1949, No. 472, § 10, provided, in part, that it was the purpose of the act to provide additional and cumulative remedies to prevent, abate, and control the pollution of the waters of the state, and that nothing contained in the act should be construed to abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor should any provision of the act, or any action done by virtue of the act, be construed as estopping the state, or any municipality or person, as riparian owners or otherwise, in the exercise of their rights in equity or under the common law or statutory law, to suppress nuisances or to abate pollution.

In Acts 1975, No. 743, § 1, the General

Assembly found and declared that since the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.), provided for a permit system (National Pollutant Discharge Elimination System) to regulate the discharge of pollutants to the waters of the United States and provided that permits may be issued by states which are authorized to implement the provisions of that act, it was in the interest of the people of the State of Arkansas to amend the Arkansas Water and Air Pollution Control Act, as amended (§§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-314), in a manner so as to provide required legal authority to the State of Arkansas, through the Department of Pollution Control and Ecology, to implement the provisions of the Federal Water Pollution Control Act, as amended, and thereby to continue in effect the state permit program for the prevention and elimination of pollution of all waters of the state, including navigable waters.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Wright, In Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Environment and Small Business, 13 U. Ark. Little Rock L.J. 417.

## CASE NOTES

**Sewer System.**

The lease and service of a toilet does not fit within the definition of a public utility sewer service. *Weiss v. Best Enters., Inc.*, 323 Ark. 712, 917 S.W.2d 543 (1996).

**Cited:** *Carson v. Hercules Powder Co.*, 240 Ark. 887, 402 S.W.2d 640 (1966); *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

**8-4-103. Criminal, civil, and administrative penalties.**

## (a) CRIMINAL PENALTIES.

(1)(A) Any person that violates any provision of this chapter, that commits any unlawful act under it, or that violates any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission or the Arkansas Department of Environmental Quality shall be guilty of a misdemeanor.

(B)(i) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to:

(a) Imprisonment for not more than one (1) year;

(b) A fine of not more than twenty-five thousand dollars (\$25,000);

or

(c) Both such fine and imprisonment.

(ii) For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) It shall be unlawful for a person to:

(i) Violate any provision of this chapter, commit any unlawful act under it, or violate any rule, regulation, or order of the commission or department and leave the state or remove his or her person from the jurisdiction of this state;

(ii) Purposely, knowingly, or recklessly cause pollution of the waters or air of the state in a manner not otherwise permitted by law and thereby create a substantial likelihood of adversely affecting human health, animal or plant life, or property; or

(iii) Purposely or knowingly make any false statement, representation, or certification in any document required to be maintained under this chapter or falsify, tamper with, or render inaccurate any monitoring device, method, or record required to be maintained under this chapter.

(B)(i) A person that violates subdivision (a)(2)(A) of this section shall be guilty of a felony.

(ii)(a) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to:

(1) Imprisonment for not more than five (5) years;

(2) A fine of not more than fifty thousand dollars (\$50,000); or



(3) Both such fine and imprisonment.

(b) For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(3)(A) Any person that purposely, knowingly, or recklessly causes pollution of the waters or air of the state in a manner not otherwise permitted by law and thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a felony.

(B)(i) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to:

(a) Imprisonment for not more than twenty (20) years;

(b) A fine of not more than two hundred fifty thousand dollars (\$250,000); or

(c) Both such fine and imprisonment.

(ii) For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(4) Notwithstanding the limits on fines set in subdivisions (a)(1)-(3) of this section, if a person convicted under subdivision (a)(1), subdivision (a)(2), or subdivision (a)(3) of this section has derived or will derive pecuniary gains from commission of the offenses, then the person may be sentenced to pay a fine not to exceed two (2) times the amount of the pecuniary gain.

(b) CIVIL PENALTIES. The department may institute a civil action in any court of competent jurisdiction to accomplish any of the following:

(1) Restrain any violation of or compel compliance with the provisions of this chapter and of any rules, regulations, orders, permits, or plans issued pursuant to this chapter;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this chapter;

(3) Recover all costs, expenses, and damages to the department and any other agency or division of the state in enforcing or effectuating the provisions of this chapter, including, but not limited to, natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this chapter and of any rules, regulations, permits, or plans issued pursuant to this chapter; or

(5) Recover civil penalties assessed pursuant to subsection (c) of this section.

(c)(1)(A) Any person that violates any provision of this chapter and regulations, rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation.

(B) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.

(2)(A) No civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing in accordance with regulations adopted by the commission.

(B) All hearings and appeals arising under this chapter shall be conducted in accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218 — 8-4-229.

(C) These administrative procedures may also be used to recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this chapter, including, but not limited to, natural resource damages.

(d)(1)(A) Before assessing a civil penalty under subsection (c) of this section, the Director of the Arkansas Department of Environmental Quality shall provide public notice of and a reasonable opportunity to comment on the proposed issuance of the order.

(B) If the civil penalty is being assessed under an order on consent, the order shall not be effective until thirty (30) days after the publication of notice of the order.

(C) Notice shall also be given to each member of the commission.

(D) If a civil penalty is being assessed for a violation that occurs within the corporate limits of any municipality in Arkansas, a copy of the public notice shall be delivered to the chief executive officer of the municipality in which the alleged violation occurred, along with a copy of any proposed order concerning the violation, and the municipality shall be given a reasonable opportunity to comment on the proposed order consistent with the public notice and comment requirements of this chapter and regulations promulgated under this chapter.

(2) Notice of any administrative enforcement order shall contain the following:

(A) The identity of the person or facility alleged to be in violation;

(B) The location by city or county of the alleged violation;

(C) A brief description by environmental media, that is, water, air, solid waste, or hazardous waste, impacted by the alleged violation;

(D) The type of administrative action proposed, that is, a consent order, a notice of violation, or an emergency order; and

(E) The amount of penalty to be assessed.

(3)(A) Any person that comments on a proposed assessment of a penalty under this subsection shall be given notice of any hearing held under this subsection.

(B) In any hearing held under this subsection, the person shall have a right to intervene upon timely application.

(4)(A)(i) If no adjudicatory hearing is held on a proposed order, any person that commented on the proposed order may petition the commission to set aside the order and provide an adjudicatory hearing.

(ii) A petition to set aside such an order must be filed with the commission within thirty (30) days of service of the order.

(B) If the evidence presented by the petitioner is material and was not considered in the issuance of the order and the commission finds in light of the new evidence that the order is not reasonable and appropriate, it may set aside the order and provide a hearing.

(C) If the commission denies a hearing under this subdivision (d)(4), it shall provide to the petitioner notice of and its reasons for the denial. The denial of such a hearing may be appealed pursuant to § 8-4-222.

(5) On its own initiative, the commission may institute review of any enforcement action taken by the director within thirty (30) days of the effective date of the order.

(e) As an alternative to the limits on civil penalties set in subsections (b) and (c) of this section, if a person found liable in actions brought under subsection (b) or subsection (c) of this section has derived pecuniary gain from commission of the offenses, then he or she may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

(f)(1) All moneys collected as reimbursement for expenses, costs, and damages to the department shall be deposited into the operating fund of the department.

(2) All moneys collected as civil penalties shall be deposited into the Hazardous Substance Remedial Action Trust Fund as provided by § 8-7-509.

(3)(A) In his or her discretion, the director may authorize in-kind services or cash contributions as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

(B) The violator may provide in-kind services or cash contributions as directed by the department by utilizing the violator's own expertise, by hiring and compensating subcontractors to perform the services, by arranging and providing financing for the services, or by other financial arrangements initiated by the department in which the violator and the department retain no monetary benefit, however remote.

(C) The services shall not duplicate or augment services already provided by the department through appropriations of the General Assembly.

(4) All moneys collected that represent the costs, expenses, or damages of other agencies or subdivisions of the state shall be distributed to the appropriate governmental entity.

(g)(1) Pursuant to duly promulgated ordinances or regulations, any governmental entity permitted to operate a publicly owned treatment works shall have the authority to collect in a court of competent jurisdiction civil or criminal penalties in an amount not to exceed one thousand dollars (\$1,000) for each violation by industrial users of pretreatment standards or requirements.

(2) Such a criminal or civil action may be initiated only after a majority vote of the entity's governing body resolves to pursue such an action.

(3) For the purpose of this subsection, each day of a continuing violation may be deemed a separate violation.

(h) The culpable mental states referenced throughout this section shall have the same definitions as set out in § 5-2-202.



(i) Solicitation or conspiracy, as defined by § 5-3-301 et seq. and § 5-3-401 et seq., to commit any criminal act proscribed by this section and §§ 8-6-204 and 8-7-204 shall be punishable as follows:

(1) Any solicitation or conspiracy to commit an offense under this section that is a misdemeanor shall be a misdemeanor subject to:

(A) Fines not to exceed fifteen thousand dollars (\$15,000) per day of violation;

(B) Imprisonment for more than six (6) months; or

(C) Both such fines and imprisonment;

(2) Any solicitation or conspiracy to commit an offense under this section that is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment up to five (5) years shall be a felony subject to:

(A) Fines up to thirty-five thousand dollars (\$35,000) per day;

(B) Imprisonment up to two (2) years; or

(C) Both such fines and imprisonment;

(3) Any solicitation or conspiracy to commit an offense under this section that is a felony subject to fines of one hundred thousand dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a felony subject to:

(A) Fines up to seventy-five thousand dollars (\$75,000) per day;

(B) Imprisonment up to seven (7) years; or

(C) Both such fines and imprisonment; and

(4) Any solicitation or conspiracy to commit an offense under this section that is a felony subject to fines of two hundred fifty thousand dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a felony subject to:

(A) Fines up to one hundred fifty thousand dollars (\$150,000) per day;

(B) Imprisonment up to fifteen (15) years; or

(C) Both such fines and imprisonment.

(j) In cases considering suspension of sentence or probation, efforts or commitments by the defendant to remediate any adverse environmental effects caused by the defendant's activities may be considered by the court to be restitution as contemplated by § 5-4-301.

(k) A business organization or its agents or officers may be found liable under this section in accordance with the standards set forth in § 5-2-501 et seq. and sentenced to pay fines in accordance with the provisions of § 5-4-201(d) and (e).

(l)(1) A person that uses a cleaning agent in violation of this chapter is guilty of a misdemeanor and upon conviction is subject to a fine not exceeding one hundred dollars (\$100).

(2) A person that sells, distributes, or manufactures a cleaning agent in violation of this chapter is guilty of a misdemeanor and upon conviction is subject to a fine not exceeding one thousand dollars (\$1,000).

(3)(A) The department may seize any cleaning agent held for sale or distribution in violation of this chapter.

(B) The seized cleaning agents are considered forfeited.

**History.** Acts 1949, No. 472, [Part 1], § 9; 1973, No. 262, § 10; 1975, No. 743, § 8; 1983, No. 733, § 1; A.S.A. 1947, § 82-1909; Acts 1987, No. 529, § 1; 1991, No. 884, § 1; 1991, No. 1057, §§ 3, 5; 1993, No. 163, § 10; 1993, No. 165, § 10; 1993, No. 454, § 2; 1993, No. 461, § 2; 1993, No. 731, § 3; 1995, No. 384, § 5; 1995, No. 895, § 1; 2003, No. 133, § 1; 2005, No. 1824, § 5.

**A.C.R.C. Notes.** Acts 1991, No. 884, § 2, as amended by Acts 1997, No. 179, § 34, provided: "All rules and regulations promulgated pursuant to this act shall be reviewed by the House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees thereof."

Acts 2005, No. 1824, § 1, provided: "The purpose of this Act is to resolve questions that have arisen regarding the phrase 'at the time of disposal' in Arkansas Code § 8-7-512(a)(3) and § 8-7-512(a)(4), as interpreted by the Arkansas Supreme Court in *Arkansas Department of Environmental Quality v. Brighton Corporation, et al.*, 352 Ark. 396, 102 S.W. 3d 458 (2003), and to clarify that the Arkansas Remedial Action Trust Fund Act is remedial in nature and should be applied retroactively."

**Publisher's Notes.** Acts 1973, No. 262, § 1, provided that it was the purpose of the act to amend the Arkansas Water and Air Pollution Control Act (§ 8-4-101 et seq.), in such manner as to qualify and provide required legal authority to the State of Arkansas, through Department of Pollution Control and Ecology (now the Arkansas Pollution Control and Ecology Commission), for participation in the National Pollutant Discharge Elimination System as provided by the Federal Water Pollution Control Act Amendments of

1972, adopted October 18, 1972 (codified primarily as 33 U.S.C. 1251 et seq.), and to continue in effect the state permit program for the prevention and elimination of pollution of all waters of the state, including navigable waters.

For legislative findings and declarations for Acts 1975, No. 743, see Publisher's Notes to § 8-4-102.

Acts 1991, No. 1057, § 1, provided: "The General Assembly finds and determines that the criminal and civil penalties imposed by current law do not accurately reflect the degree of concern which the state places upon its environmental resources. The current criminal penalties for hazardous waste and other violations are among the lowest in the nation. Civil penalties for violations of the state water, air, solid waste and hazardous waste pollution control statutes are set at the minimum necessary to receive federally delegated programs. In declaring itself "The Natural State," the State of Arkansas demonstrated its commitment to its environmental resources. This commitment must be reflected in its environmental enforcement program. This act shall be liberally construed so as to achieve remedial intent."

Acts 1991, No. 1057, § 5, is also codified as §§ 8-6-204 (f)-(i) and 8-7-204 (f)-(i).

Acts 1993, No. 731, § 1, provided: "Purpose. The state of Arkansas has an abundance of environmental concerns which need research and study, as well as concerns which have an immediate remedy but are absent funds to facilitate their implementation. This amendment serves to clarify the existing use of inkind services as penalties, to include cash contributions for use in worthy environmental projects and to advance environmental interests."

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

CASE NOTES

ANALYSIS

Construction.  
Abatement of Dangerous Condition.  
Civil Action Not Filed.  
Taking of Property.

**Construction.**

The provisions in this chapter for assessing administrative penalties are comparable to those in 33 U.S.C. § 1319(g). *Arkansas Wildlife Fed'n v. ICI Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff'd*, *Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376 (8th Cir. 1994).

**Abatement of Dangerous Condition.**

Where the record showed that dioxin was escaping from a plant site in quantities that under an acceptable, but unproved, theory could be considered as teratogenic, mutagenic, fetotoxic, and carcinogenic, there was a reasonable medical concern over the public health, and therefore the escape of dioxin into a creek and bayou from the plant site constituted an imminent and substantial endangerment to the health of persons and was subject to abatement. *United States v. Vertac Chem. Corp.*, 489 F. Supp. 870 (E.D. Ark. 1980), *aff'd*, 961 F.2d 796 (8th Cir. 1992).

**Civil Action Not Filed.**

Where, pursuant to § 8-4-207, department of pollution control and ecology sought to obtain assessment of a civil penalty by the circuit court against defendant company without filing any civil action under this section, and there was no current violation at the time the plaintiff sought the penalty, trial court properly dismissed the action on the ground that it had no jurisdiction to consider the matter prior to an administrative hearing. *Arkansas Dep't of Pollution Control & Ecology v. B.J. McAdams, Inc.*, 303 Ark. 144, 792 S.W.2d 611 (1990).

**Taking of Property.**

The lumber company did not show that compliance with the Water and Air Pollution Control Act would be commensurate to a taking of its property where there was no proof of the company's net worth, nor anything to show a before and after value relative to the cost of compliance, and there was no proof that other options were open to the company. *J.W. Black Lumber Co. v. Arkansas Dep't of Pollution Control & Ecology*, 290 Ark. 170, 717 S.W.2d 807 (1986).

**Cited:** *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

**8-4-104. Arkansas Pollution Control and Ecology Commission — Members.**

(a) There is created and established an Arkansas Pollution Control and Ecology Commission.

(b) The Arkansas Pollution Control and Ecology Commission shall be composed of thirteen (13) members:

(1)(A) The Governor, by and with the advice and consent of the Senate, shall appoint seven (7) members.

(B) Each congressional district shall be represented on the Arkansas Pollution Control and Ecology Commission by at least one (1) member, and no district shall have more than two (2) members of the seven (7) appointees.

(C)(i) The Governor shall not appoint a member to represent any specific or special interest group, organization, or philosophy.

(ii) However, in making appointments to the Arkansas Pollution Control and Ecology Commission, the Governor shall appoint individuals who have knowledge or expertise in matters within the jurisdiction of the Arkansas Pollution Control and Ecology Commission, including government, business or industry, agriculture and



livestock, forestry, health, ecology, recreation and tourism, and geology.

(D) Each member appointed by the Governor shall be appointed for a term of four (4) years; and

(2) The other six (6) members of the Arkansas Pollution Control and Ecology Commission shall be:

(A) The Director of the Department of Health or his or her designee; and

(B)(i) The directors of the Arkansas State Game and Fish Commission, the Arkansas Forestry Commission, the Arkansas Natural Resources Commission, the Oil and Gas Commission, and the Arkansas Geological Survey.

(ii) Any director specified in subdivision (b)(2)(B)(i) of this section may designate the agency's deputy director or assistant director to serve in lieu of the director.

(c) Elected city, county, and state officials shall not serve on the Arkansas Pollution Control and Ecology Commission after the expiration of any current member's term.

(d) In the event of a vacancy in the membership of the Arkansas Pollution Control and Ecology Commission, the Governor shall appoint a person to fill the vacancy temporarily who shall serve until the next meeting of the Senate, when some person shall be appointed by the Governor, by and with the consent and approval of the Senate, to serve the remainder of the unexpired term.

(e)(1) The chair and vice chair shall be elected annually.

(2) The members of the Arkansas Pollution Control and Ecology Commission representing the state agencies shall not serve as chair or vice chair.

(f)(1)(A) The Arkansas Pollution Control and Ecology Commission shall hold at least four (4) regular meetings in each calendar year at times and places to be fixed by the Arkansas Pollution Control and Ecology Commission and such other meetings as may be necessary.

(B) Special meetings may be called at the discretion of the chair, and they shall be called by him or her upon written request of two (2) members of the Arkansas Pollution Control and Ecology Commission by delivery of written notice to each member of the Arkansas Pollution Control and Ecology Commission.

(2) Nine (9) members of the Arkansas Pollution Control and Ecology Commission shall constitute a quorum to transact business in both regular and special meetings.

(g)(1) Each member of the Arkansas Pollution Control and Ecology Commission representing state agencies shall receive no additional salary or per diem for services as a member of the Arkansas Pollution Control and Ecology Commission but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(2) The other seven (7) members appointed by the Governor may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

**History.** Acts 1949, No. 472 [Part 1], § 2; 1953, No. 232, § 1; 1959, No. 211, § 1; 1965, No. 183, § 2; 1985, No. 930, § 1; A.S.A. 1947, § 82-1903; Acts 1991, No. 744, § 1; 1997, No. 250, § 44; 2001, No. 318, § 1; 2005, No. 2224, § 1.

**Publisher's Notes.** Acts 1949, No. 472, § 2, in part, created and established within the State Board of Health a Water Pollution Control Commission. Acts 1965, No. 183, § 2, in part, amended the section to create and establish the Arkansas Pollution Control Commission.

Acts 1971, No. 38, § 8, in part, transferred the Pollution Control Commission and its functions, powers, and duties to the Department of Pollution Control and Ecology by a type 4 transfer and provided in part, that any reference to the Pollution Control Commission and its director would be deemed to refer to the Department of Pollution Control and Ecology and the director of the department, respectively. However, § 25-2-107 provides that governing bodies such as the Pollution Control Commission shall retain their statutory authority, powers, duties, and functions upon transfer by a type 4 transfer.

Additionally, Acts 1971, No. 38, § 8, referred to the Commission on Pollution Control and Ecology.

Acts 1973, No. 262, § 2, which amended Acts 1949, No. 472, § 2(b), referred to a Commission on Pollution Control and Ecology, which is probably the same commission as the Arkansas Pollution Control Commission created by Acts 1949, No. 472, § 2(a) as amended. However, Acts 1973, No. 262 did not change the name of the commission created in Acts 1949, No. 472, § 2(a) as Acts 1985, No. 930, § 1, in part, amended Acts 1949, No. 472, § 2, to create an Arkansas Pollution Control and Ecology Commission.

Acts 1991, No. 744, § 1, provided, in part, that initial members of the Arkansas Pollution Control and Ecology Commission shall be appointed by the Governor as follows: one (1) member for one (1) year, two (2) members for two (2) years, two (2) members for three (3) years and two (2) members for four (4) years. The section further provided that those members serving on July 1, 1991, would continue to serve for the remainder of their terms.

## **8-4-105. Director of the Arkansas Department of Environmental Quality.**

(a)(1) The executive head of the Arkansas Department of Environmental Quality shall be the Director of the Arkansas Department of Environmental Quality, who shall be appointed by the Governor with the advice and consent of the Senate, and shall serve at the pleasure of the Governor.

(2) The director, with the advice and consent of the Governor, shall appoint the heads of the divisions of the department, including the Division of Water Pollution Control, the Division of Air Pollution Control, the Division of Solid Waste Management, the Division of Environmental Preservation, the Division of Administration, and such other divisions as may be established.

(3) All of the personnel of the department shall be employed by and serve at the pleasure of the director. However, nothing in this subdivision (a)(3) shall be construed to reduce any right which an employee shall have under any civil service or merit system.

(b)(1) The director shall be the executive officer and active administrator of all pollution control activities.

(2) All of the powers of the Arkansas Pollution Control and Ecology Commission under §§ 8-4-201(b)(5), 8-4-203, and 8-4-204 relating to plans and specifications for disposal systems and permits for the

discharge of sewage, industrial wastes, or other wastes into the waters of the state are vested in the director.

**History.** Acts 1949, No. 472 [Part 1], § 2; 1963, No. 503, § 1; 1973, No. 262, § 2; A.S.A. 1947, § 82-1903; Acts 1991, No. 744, § 2; 1999, No. 1164, § 16.

**Publisher's Notes.** As to transfer of commission to the Department of Pollution Control and Ecology, see Publisher's Notes to § 8-4-104.

For legislative purpose of Acts 1973, No. 262, see Publisher's Notes to § 8-4-103.

**Cross References.** Arkansas Department of Environmental Quality established, § 25-14-101.

### 8-4-106. Technical and other services and public assistance.

(a) Technical, scientific, legal, or other services may be performed, insofar as practicable, by personnel of other state agencies and educational institutions and the Attorney General. However, the personnel of these state agencies shall receive no additional salary or wages for their services to the Arkansas Department of Environmental Quality.

(b) The Director of the Arkansas Department of Environmental Quality, however, may employ and compensate, within appropriations available, consultants and such assistants and employees as may be necessary to carry out the provisions of this chapter and prescribe their powers and duties.

**History.** Acts 1949, No. 472 [Part 1], § 2; 1963, No. 503, § 1; 1965, No. 183, § 3; 1973, No. 262, § 3; A.S.A. 1947, § 82-1903; Acts 1991, No. 744, § 3; 1999, No. 1164, § 17.

**Publisher's Notes.** For legislative pur-

pose of Acts 1973, No. 262, see Publisher's Notes to § 8-4-103.

As to the Commission on Pollution Control and Ecology, see note following § 8-4-104.

### 8-4-107. Prosecution of public nuisance actions.

In any legal action arising from, relating to, or including violations of laws or regulations charged to the enforcement authority of the Arkansas Department of Environmental Quality that also alleges the existence of a public nuisance at common law, the Attorney General or the department may serve as the instrumentality of the state authorized to initiate and prosecute such action.

**History.** Acts 1991, No. 516, § 4; 1999, No. 1164, § 18.

**A.C.R.C. Notes.** References to "this chapter" in §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, or §§ 8-4-301 — 8-4-314 may

not apply to this section, which was enacted subsequently.

References to "this subchapter" in §§ 8-4-101 — 8-4-106 may not apply to this section which was enacted subsequently.

## RESEARCH REFERENCES

**ALR.** Remedies for sewage treatment plant alleged or deemed to be nuisance. 101 A.L.R.5th 287.



## SUBCHAPTER 2 — WATER POLLUTION

## SECTION.

- 8-4-201. Powers and duties of department and commission generally.
- 8-4-202. Rules and regulations.
- 8-4-203. Permits generally.
- 8-4-204. Permits — Revocation.
- 8-4-205. Permits — Hearings upon denial, revocation, or modification and other permit actions.
- 8-4-206. State water pollution control agency — General authority.
- 8-4-207. State water pollution control agency — Powers and duties generally.
- 8-4-208. State water pollution control agency — Administration of permit program generally.
- 8-4-209. State water pollution control agency — Participation of certain persons prohibited in approval of permit applications.
- 8-4-210. Investigations and hearings generally.
- 8-4-211. Declaratory orders.
- 8-4-212. Adjudicatory hearings and orders.
- 8-4-213. Conclusiveness of commission actions\*.

## SECTION.

- 8-4-214. Service of notice, orders, etc.
- 8-4-215. Intergovernmental cooperation.
- 8-4-216. Information and inspections.
- 8-4-217. Unlawful actions.
- 8-4-218. Violations of chapter, orders, rules, etc. — Hearings — Notice.
- 8-4-219. Violations of chapter, orders, rules, etc. — Hearings — Conduct.
- 8-4-220. Violation of chapter, orders, rules, etc. — Order of department without hearing.
- 8-4-221. Violations of chapter, orders, rules, etc. — Hearing — Orders.
- 8-4-222. Appeals — Entitlement.
- 8-4-223. Appeals — Notice.
- 8-4-224. Appeals — Parties.
- 8-4-225. Appeals — Venue.
- 8-4-226. Appeal — Response by commission and record.
- 8-4-227. Appeal — Review by court.
- 8-4-228. Appeal — Stay of proceedings.
- 8-4-229. Appeals, proceedings, etc. — Presumptions.
- 8-4-230. Temporary variances and interim authority.
- 8-4-231. Effectiveness of regulations or orders.

**Publisher's Notes.** Acts 1965, No. 183, § 6, provided that Acts 1949, No. 472, §§ 1-12 (subchapters 1 and 2 of this chapter) were designated as comprising "Part 1, Water Pollution."

**Effective Dates.** Acts 1961, No. 120, § 9: Feb. 21, 1961. Emergency clause provided: "Whereas, operating experience under Act 472 of 1949 has revealed ambiguous and inadequate provisions which the foregoing amendments will eliminate and correct, and whereas a continuation of said ambiguous and inadequate provisions would be inimical to the proper control and abatement of water pollution and to the public peace, health, and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from the date of its approval."

Acts 1965, No. 183, § 8: Mar. 10, 1965. Emergency clause provided: "Whereas, the pollution of the air resources of the State of Arkansas by air contaminants can create serious hazards to the public health and welfare of the people; and, whereas, it is the public policy of the state to maintain such a reasonable degree of purity of the air to the end that the least possible injury shall be done to human, plant or animal life or to property, and to maintain public enjoyment of the state's natural resources, consistent with the economic and industrial well-being of the state; and, whereas, existing laws to prevent, control, and abate air pollution are inadequate to protect the health and general welfare of the people; now, therefore, an emergency is hereby declared to exist and this act

shall be in full force and effect from the date of its approval."

Acts 1973, No. 262, § 13: Mar. 9, 1973. Emergency clause provided: "It being found that the existing state laws relating to water pollution control do not contain adequate legal authority for the state to continue to administer its own permit program for discharges into navigable waters within the state in lieu of that of the Federal Environmental Protection Agency and it being desirable that such authority be provided, an emergency is, therefore, declared hereby to exist and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1975 No. 748, § 11: Apr. 3, 1975. Emergency clause provided: "It being found that the existing state laws relating to water pollution control do not contain adequate legal authority for the state to continue to administer its own permit program for discharges into navigable waters within the state in lieu of that of the Federal Environmental Protection Agency and it being desirable that such authority be provided, an emergency is, therefore, declared hereby to exist and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 943, § 6: Apr. 5, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that, in order to avoid the needless

disruption of business in this state, the director of the Department of Pollution Control and Ecology should be given authority to grant temporary variances and interim authority to construct or operate regulated activities. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2009, No. 369, § 2: Mar. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that establishing financial assurance requirements for the closure of commercial facilities that engage in land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations is necessary to protect human health and the environment and that a delay in the effective date of this Act may result in harm to human health or the environment. Therefore, an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage or approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

## RESEARCH REFERENCES

**Am. Jur.** 61A Am. Jur. 2d, Poll. Cont., § 134 et seq.

**Ark. L. Notes.** Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology Department and Commission, 1988 Ark. L. Notes 23.

**C.J.S.** 39A C.J.S., Health & Env., § 131.

**U. Ark. Little Rock L.J.** Legislative Survey, Civil Procedure, 8 U. Ark. Little Rock L.J. 555.

Note, Environmental Law — The Clean Water Act — Congress has Entrusted the EPA, Not the Courts, with the Final Word on Federal Water Pollution Regulatory Law. *Arkansas v. Oklahoma*, 112 S. Ct. 1046, 503 U.S. 91, 117 L. Ed. 2d 239 (1992), 15 U. Ark. Little Rock L.J. 117.

Legislative Survey, Environmental Law, 16 U. Ark. Little Rock L.J. 111.

## CASE NOTES

**Construction.**

This subchapter is comparable to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). *Arkansas Wildlife Fed'n v. ICI*

*Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff'd*, *Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376 (8th Cir. 1994).

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**8-4-201. Powers and duties of department and commission generally.**

(a) The Arkansas Department of Environmental Quality or its successor is given and charged with the following powers and duties:

(1) **ENFORCEMENT OF LAWS.** To administer and enforce all laws and regulations relating to the pollution of any waters of the state;

(2) **INVESTIGATIONS AND SURVEYS.**

(A) To investigate the extent, character, and effect of the pollution of the waters of this state; and

(B) To conduct investigations, research, surveys, and studies and gather data and information necessary or desirable in the administration or enforcement of pollution laws;

(3) **PROGRAM.** To prepare a comprehensive program for the elimination or reduction of the pollution of the waters of this state, including application for and delegation of federal regulatory programs; and

(4) **PLANS OF DISPOSAL SYSTEMS.** To require to be submitted and to approve plans and specifications for disposal systems, or any part of them, and to inspect the construction thereof for compliance with the approved plans thereof.

(b) The Arkansas Pollution Control and Ecology Commission is given and charged with the following powers and duties:

(1)(A) Promulgation of rules and regulations, including water quality standards and the classification of the waters of the state and moratoriums or suspensions of the processing of types or categories of permits, implementing the substantive statutes charged to the department for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a



written report that shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgation of rules, regulations, and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, provide the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, provide the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies or investigations as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department, provided, however, that the director shall always remain within the plenary authority of the Governor; and

(8) Upon a majority vote, initiate review of any director's decision.

**History.** Acts 1949, No. 472, [Part 1], No. 163, § 11; 1993, No. 165, § 11; 1997, § 3; A.S.A. 1947, § 82-1904; Acts 1993, No. 1219, § 5; 1999, No. 1164, § 19.

#### CASE NOTES

**Cited:** Arkansas Comm'n of Pollution Control & Ecology v. Husky Indus., Inc., 293 Ark. 249, 737 S.W.2d 157 (1987).

#### 8-4-202. Rules and regulations.

(a) The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules and regulations implementing or effectuating the powers and duties of the Arkansas Department of Environmental Quality and the commission under this chapter.

(b) Without limiting the generality of this authority, these rules and regulations may, among other things, prescribe:

(1) Effluent standards specifying the maximum amounts or concentrations and the physical, thermal, chemical, biological, and radioactive nature of the contaminants that may be discharged into the waters of this state or into publicly owned treatment facilities;

(2) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their sources, including publicly owned treatment facilities and industrial discharges into such facilities, the collection of samples, and the collection, reporting, and retention of data resulting from such monitoring; and

(3) Water quality standards, performance standards, and pretreatment standards.

(c)(1) Any person shall have the right to petition the commission for the issuance, amendment, or repeal of any rule or regulation. Within sixty (60) days from the date of the submission of a petition, the commission shall either institute rulemaking proceedings or give the petitioner written notice denying the petition, together with a written statement setting out the reasons for denial.

(2) In the event the petition is denied, the decision of the commission will be deemed a final order subject to appeal as provided in subdivision (d)(5) of this section.

(3) The record for appeal in a petition denial shall consist of the petition for rulemaking filed with the commission, the commission's written statement setting out the reasons for denial, and any document referenced therein.

(d)(1)(A) Before the adoption, amendment, or repeal of any rule or regulation or before suspending the processing of a type or category of permits or the declaration of a moratorium on a type or category of permits, the commission shall give at least thirty (30) days' notice of its intended action.

(B) The notice shall include:

- (i) A statement of the substance of the intended action;
- (ii) A description of the subjects and issues involved; and
- (iii) The time, place, and manner in which interested persons may make comments.

(C) The notice shall be mailed or emailed to all persons who have requested advance notice of rulemaking proceedings.

(D) The notice shall also be published at least two (2) times in newspapers having a general statewide circulation and in the appropriate industry, trade, or professional publications the commission may select.

(2)(A) All interested parties shall be afforded a reasonable opportunity to:

- (i) Submit written data, information, views, opinions, and arguments; and
- (ii) Make oral statements concerning the proposed rule, regulation, suspension, or moratorium prior to a decision being rendered by the commission.

(B) All written material, photographs, published material, and electronic media received by the commission shall be preserved and, along with a record of all oral comments made at any public hearing, shall become an element of the record of rulemaking.

(C) Any person who considers himself or herself injured in his or her person, business, or property by final agency action under this

section shall be entitled to judicial review of the action under this section.

(3)(A) If, in response to comments, the commission amends a proposed regulation to the extent that the rule would have an effect not previously expressed in the notice required by subdivision (d)(1) of this section, the commission shall provide another adequate public notice.

(B) Subdivision (d)(3)(A) shall not, however, require a second public notice if the final regulation is a logical outgrowth of the regulation proposed in the prior notice.

(4) The commission shall compile and maintain a record of rule-making that shall contain:

(A)(i) A copy of all notices described in subsection (d) of this section and a concise general statement of the basis and purpose of the proposed rule, which shall include a written explanation of the necessity of the regulation and a demonstration that any technical regulation or technical standard is based on generally accepted scientific knowledge and engineering practices.

(ii) For any standard or regulation that is identical to a regulation promulgated by the United States Environmental Protection Agency, this portion of the record may be satisfied by reference to the Code of Federal Regulations.

(iii) In all other cases, the department must provide its own justification with appropriate references to the scientific and engineering literature or written studies conducted by the department;

(B) Copies of all written material, photographs, published materials, electronic media, and the record of all oral comments received by the commission during the public comment period and hearings; and

(C) A responsive summary that groups public comments into similar categories and explains why the commission accepted or rejected the rationale of each category.

(5)(A) The decisions of the commission with regard to this section are final and may be judicially appealed to the appropriate circuit court as provided in § 8-4-222 within thirty (30) days after filing with the office of the Secretary of State by persons that have standing as set out in subdivision (d)(2) of this section.

(B) The record for review shall consist of a copy of the regulation and the record of rulemaking described in subdivision (d)(4) of this section.

(C) Rule changes, suspensions, or moratoria on types of categories of permits adopted by the commission shall be stayed and not take effect during the pendency of the appeal, except as specified in subsection (e) of this section.

(e)(1) If the commission determines that imminent peril to the public health, safety, or welfare requires immediate change in the rules or immediate suspension or moratorium on categories or types of permits, it may, after documenting the facts and reasons, declare an emergency and implement emergency rules, regulations, suspensions, or moratoria.



(2) No rule, regulation, suspension, or moratorium adopted under an emergency declaration shall be effective for longer than one hundred eighty (180) days.

(3) The imminent loss of federal funding, certification, or authorization for any program administered by the department shall establish a prima facie case of imminent peril to the public health, safety, or welfare.

**History.** Acts 1949, No. 472, [Part 1], § 3; 1961, No. 120, § 5; 1973, No. 262, § 4; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 12; 1993, No. 165, § 12; 1997, No. 314, § 1; 1997, No. 1219, § 5; 2011, No. 195, § 1.

**Publisher's Notes.** Acts 1961, No. 120, § 8, which amended Acts 1949, No. 472, § 10, provided, in part, that it was the purpose of the act to provide additional and cumulative remedies to prevent, abate, and control the pollution of the waters of the state and that nothing contained in the act should be construed to abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor should any provision of the act, or any action done by virtue of the act, be construed as estopping the state, or any municipality or person, as riparian owners or otherwise, in the exercise of their rights in

equity or under the common law or statutory law, to suppress nuisances or to abate pollution.

Acts 1973, No. 262, § 1, provided that it was the purpose of this act to amend the Arkansas Water and Air Pollution Control Act (§ 8-4-101 et seq.) in such manner as to qualify and provide required legal authority to the State of Arkansas, through the Department of Pollution Control and Ecology for participation in the National Pollutant Discharge Elimination System as provided by the Federal Water Pollution Control Act Amendments of 1972, adopted October 18, 1972 (codified primarily as 33 U.S.C. 1251 et seq.), and to continue in effect the state permit program for the prevention and elimination of pollution of all waters of the state, including navigable waters.

**Amendments.** The 2011 amendment inserted "or emailed" in (d)(1)(C).

### 8-4-203. Permits generally.

(a) The Arkansas Department of Environmental Quality or its successor is given and charged with the power and duty to issue, continue in effect, revoke, modify, or deny permits, under such conditions as it may prescribe:

- (1) To prevent, control, or abate pollution;
- (2) For the discharge of sewage, industrial waste, or other wastes into the waters of the state, including the disposal of pollutants into wells; and
- (3) For the installation, modification, or operation of disposal systems or any part of them.

(b)(1)(A)(i) The department shall not issue, modify, or renew a National Pollutant Discharge Elimination System permit or state permit for a nonmunicipal domestic sewage treatment works without the permit applicant first demonstrating to the department its financial ability to cover the estimated costs of operating and maintaining the nonmunicipal domestic sewage treatment works for a minimum period of five (5) years.

(ii) For purposes of this section, "nonmunicipal domestic sewage treatment works" means a device or system operated by an entity other than a city, town, borough, county, or sewer improvement

district that treats, in whole or in part, waste or wastewater from humans or household operations and must continuously operate to protect human health and the environment despite a permittee's failure to maintain or operate the treatment works.

(iii) State or federal facilities, schools, universities, and colleges are specifically exempted from the requirements of this section.

(iv) Each permit application for a nonmunicipal domestic sewage treatment works submitted under this section shall be accompanied by a cost estimate for a third party to operate and maintain the nonmunicipal domestic sewage treatment works each year for a period of five (5) years.

(B)(i) The department shall not issue or modify a National Pollutant Discharge Elimination System permit or a state permit for a nonmunicipal domestic sewage treatment works that proposes to use a new technology that, in the discretion of the department, cannot be verified to meet permit requirements without the applicant first demonstrating its financial ability to replace the new technology with a nonmunicipal domestic sewage treatment works that uses technology acceptable to the department.

(ii) Each permit application for a nonmunicipal domestic sewage treatment works that proposes to use a new technology that in the discretion of the department cannot be verified to meet permit requirements shall be accompanied by a cost estimate to replace the proposed system with a nonmunicipal domestic sewage treatment works that uses technology acceptable to the department.

(2) The applicant's financial ability to operate and maintain the nonmunicipal domestic sewage treatment works for a period of five (5) years shall be demonstrated to the department by:

(A) Obtaining insurance that specifically covers operation and maintenance costs;

(B) Obtaining a letter of credit;

(C) Obtaining a surety bond;

(D) Obtaining a trust fund or an escrow account; or

(E) Using a combination of insurance, letter of credit, surety bond, trust fund, or escrow account.

(3) The department may reduce or waive the amount of the required financial assurance if the permit applicant can demonstrate to the department's satisfaction that:

(A) For a renewal permit, during the five (5) years preceding the application for a renewal permit, the nonmunicipal domestic sewage treatment works facility has:

(i) Remained in continuous operation;

(ii) Received no more than three (3) permit violations within a six-month period as set out in the permit issued by the department;

(iii) Maintained the services of a certified wastewater treatment operator, where applicable;

(iv) Remained financially solvent; and

(v) Operated the facility's nonmunicipal domestic sewage treatment works to prevent the discharge of waterborne pollutants in



unacceptable concentrations to the surface waters or groundwater of the state as defined in the permit or as defined in the state's water quality standards; or

(B) For a new permit, that the reduction or waiver is necessary to accommodate important economic or social development in the area of the proposed nonmunicipal domestic sewage treatment works facility and that the applicant has shown a history of financial responsibility and compliance with regulatory requirements in other relevant ventures.

(4) The department has discretion to withdraw a reduction or waiver granted under this subsection at any time in order to protect human health or the environment.

(5) A financial instrument required by this section shall be posted to the benefit of the department and shall remain in effect for the life of the permit.

(6) It is explicitly understood that the department shall not directly operate and shall not be responsible for the operation of any nonmunicipal domestic sewage treatment works.

(c)(1)(A)(i) All facilities that engage in land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations shall be closed in a manner that ensures protection of human health and the environment.

(ii) As used in this subsection, "land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations" means land farming through the controlled and repeated application of drilling fluids to a soil surface or the practice of receiving and storing said fluids from offsite for waste management.

(iii) Surface facilities associated with Class II injection wells are specifically excluded from the requirements of this subsection.

(iv) Land applications at the drilling or exploration site that are authorized under any general permit issued by the department are excluded from the requirements of this subsection.

(B) By October 1, 2009, each existing permitted facility regulated under this subsection shall submit to the department the following:

(i) A plan to close the permitted facility and make any site restoration deemed necessary by the department;

(ii) A detailed cost estimate to close and restore the permitted facility that meets the requirements of this subsection and is approved by the department; and

(iii) A financial mechanism that demonstrates to the department's satisfaction the permittee's financial ability to ensure adequate closure and any necessary restoration of the permitted facility in accordance with the requirements of this subsection.

(C) The department shall not issue, modify, or renew a permit for facilities regulated under this subsection without the permit applicant first demonstrating to the department's satisfaction the applicant's financial ability to ensure adequate closure and any necessary



restoration of the permitted facility in accordance with the requirements of this subsection.

(D)(i) The amount of any financial assurance required under this subsection shall be equal to or greater than the detailed cost estimate for a third party to close the permitted facility in accordance with closure plans approved by the department.

(ii) The detailed cost estimate shall be prepared by an independent professional consultant.

(iii) On or before August 15 of each year, a permittee shall submit to the department for approval a detailed cost estimate to close and restore the permitted facility in accordance with closure plans that have been approved by the department.

(E)(i) For new permits, the applicant shall submit to the department for approval a detailed cost estimate to close and restore the facility based on the proposed operation and capacity of the facility from the date the permit is issued through the following October 1.

(ii) For renewal or modification applications, the permittee shall submit to the department for approval a detailed cost estimate to close and restore the permitted facility based on closure plans that have been approved by the department.

(F)(i) For each permit, the financial assurance mechanism shall be renewed on October 1 of each year.

(ii) For each permit, documentation that the required financial assurance mechanism has been renewed beginning October 1 of that year shall be received by the department by September 15 of each year or the department shall initiate procedures to:

(a) Take possession of the funds guaranteed by the financial assurance mechanism; and

(b)(1) Suspend or revoke the permit under which the facility is operated.

(2) A permit shall remain suspended until a financial assurance mechanism is provided to the department in accordance with this subsection.

(iii) The permittee is responsible for ensuring that documentation of annual renewal is received by the department by its due date.

(2) The permittee or applicant shall demonstrate financial ability to adequately close or restore the land application or storage facility by:

(A) Obtaining insurance that specifically covers closure and restoration costs;

(B) Obtaining a letter of credit;

(C) Obtaining a bond or other surety instrument;

(D) Creating a trust fund or an escrow account;

(E) Combining any of the instruments in (c)(2)(A)-(D); or

(F) Any other financial instrument approved by the director.

(3) A financial instrument required by this subsection shall:

(A) Be posted to the benefit of the department;

(B) Provide that the financial instrument cannot be cancelled without sixty (60) days prior written notice addressed to the depart-

ment's legal division chief as evidenced by a signed, certified mail with a return receipt request; and

(C) Be reviewed by the department upon receipt of the cancellation notice to determine whether to initiate procedures to revoke or suspend the facility's permit and whether to initiate procedures to take possession of the funds guaranteed by the financial assurance mechanism.

(4) Before the department may release a financial assurance mechanism, the department shall receive a certification by a professional engineer that the permitted facility has been closed and restored in accordance with closure plans that have been approved by the department.

(5) The department is not responsible for the operation, closure, or restoration of a facility regulated under this subsection.

(d)(1) When an application for the issuance of a new permit or a major modification of an existing permit is filed with the department, the department shall cause notice of the application to be published in a newspaper of general circulation in the county in which the proposed facility is to be located.

(2) The notice required by subdivision (d)(1) of this section shall advise that any interested person may request a public hearing on the permit application by giving the department a written request within ten (10) days of the publication of the notice.

(3) If the department determines that a hearing is necessary or desires such a hearing, the department shall schedule a public hearing and shall notify by first class mail the applicant and all persons that have submitted comments of the date, time, and place of the public hearing.

(e)(1)(A) Whenever the department proposes to grant or deny any permit application, it shall cause notice of its proposed action to be published in either:

(i) A newspaper of general circulation in the county in which the facility that is the subject of the application is located; or

(ii) In the case of a statewide permit, in a newspaper of general circulation in the state.

(B) The notice shall afford any interested party thirty (30) calendar days in which to submit comments on the proposed permit action.

(C) At the conclusion of the public comment period, the department shall announce in writing its final decision regarding the permit application.

(2)(A)(i) The department's final decision shall include a response to each issue raised in any public comments received during the public comment period. The response shall manifest reasoned consideration of the issues raised by the public comments and shall be supported by appropriate legal, scientific, or practical reasons for accepting or rejecting the substance of the comment in the department's permitting decision.

(ii) For the purposes of this section, response to comments by the department should serve the roles of both developing the record for

possible judicial review of an individual permitting action and as a record for the public's review of the department's technical and legal interpretations on long-range regulatory issues.

(iii) Nothing in this section, however, shall be construed as limiting the department's authority to raise all relevant issues of regulatory concern upon adjudicatory review of the commission of a particular permitting action.

(B)(i) In the case of any discharge limit, emission limit, environmental standard, analytical method, or monitoring requirements, the record of the proposed action and the response shall include a written explanation of the rationale for the proposal, demonstrating that any technical requirements or standards are based upon generally accepted scientific knowledge and engineering practices.

(ii) For any standard or requirement that is identical to an applicable regulation, this demonstration may be satisfied by reference to the regulation. In all other cases, the department must provide its own justification with appropriate reference to the scientific and engineering literature or written studies conducted by the department.

(f)(1) All costs of publication of notices of applications and notices of proposals to grant permits under this section shall be the responsibility of the applicant.

(2) All costs of publication of notices of proposals to deny a permit under this section shall be the responsibility of the department.

(3) Any moneys received under subsection (f) of this section shall be classified as refunds to expenditures.

(g) Only those persons that submit comments on the record during the public comment period and the applicant shall have standing to appeal the decision of the department to the Arkansas Pollution Control and Ecology Commission.

(h)(1) Permits for the discharge of pollutants into the waters of the state or for the prevention of pollution of the waters of the state shall remain freely transferable, provided the applicant for the transfer notifies the Director of the Arkansas Department of Environmental Quality at least thirty (30) days in advance of the proposed transfer date and submits a disclosure statement as required by § 8-1-106.

(2) Only those reasons set out in § 8-1-106(b)(1) and (c) constitute grounds for denial of a transfer.

(3) The permit is automatically transferred to the new permittee unless the director denies the request within thirty (30) days of the receipt of the disclosure statement.

(i) In the event of voluminous comments, including without limitation a petition, the department may require the designation of a representative to accept any notices required by this section.

(j) The notice provisions of subsections (d) and (e) of this section do not apply to permit transfers or minor modifications of existing permits.

(k) This section in no way restricts local and county government entities from enacting more stringent ordinances regulating nonmunicipal domestic treatment sewage systems in Arkansas.



(l) The commission may promulgate rules to establish a permit-by-rule. A permit-by-rule is subject to the public notice requirements and procedural provisions under § 8-4-202 et seq. but is not subject to the public notice requirements and procedural provisions under §§ 8-4-203 — 8-4-205.

(m)(1)(A)(i) The department may issue general permits under subsection (a) of this section.

(ii) A general permit is a statewide permit for a category of facilities or sources that:

(a) Involve the same or substantially similar types of operations or activities;

(b) Discharge or release the same type of wastes or engage in the same type of disposal practices;

(c) Require the same limitations, operating conditions, or standards;

(d) Require the same or similar monitoring requirements; and

(e) In the opinion of the director, may be regulated under a general permit.

(B)(i) Facilities or sources eligible to construct or operate under a general permit may obtain coverage by submitting a notice of intent to the department.

(ii) The director may require a person who has been granted coverage under a general permit to apply for and obtain an individual permit.

(2)(A) A general permit is subject to the public notice requirements for statewide permits and the procedures under subsection (e) of this section.

(B) The department shall pay the costs of publication of notice of a draft permitting decision to issue a general permit.

(C) General permit coverage is not transferable unless the general permit provides for transfer.

(3)(A)(i) Before the submittal to public comment of a general permit that has not been previously issued, the department shall consider the economic impact and environmental benefit of the general permit and its terms and conditions upon the people of the State of Arkansas, including those entities that may apply for coverage under the general permit.

(ii) This requirement does not apply to general permits or terms or conditions that adopt the language of state or federal statutes or regulations without substantive change.

(B) If the terms and conditions of a previously issued general permit are revised upon renewal, the economic impact and environmental benefit of only the proposed changes shall be considered.

(C) A general permit for which costs are specifically prohibited from being considered by state or federal law or regulation is exempt from the requirements of this subsection.

(D) The department may rely upon readily available information for its consideration of the economic impact and environmental benefit of the general permit and its terms and conditions.

(4)(A) Only those persons that submit comments on the record during the public comment period shall have standing to appeal the decision of the department to the commission.

(B) The final permitting decision of the department on the general permit is subject to a hearing before the commission under §§ 8-4-205, 8-4-212, 8-4-213, 8-4-214, and the administrative procedures promulgated by the commission.

(5)(A)(i) When a general permit includes an expiration date later than July 1, 2012, the department shall publish the notice of intent to renew or not renew the general permit at least three hundred sixty-five (365) days before the expiration of the general permit.

(ii) When a general permit includes an expiration date earlier than July 1, 2012, the department shall publish the notice of intent to renew or not renew the general permit as soon as reasonably possible.

(B) The department shall publish its final permitting decision to renew or not renew the general permit at least one hundred eighty (180) days before the expiration date of the general permit.

(C) If the general permit expires before the final decision to renew or not renew the general permit, the terms and conditions of the general permit shall remain in effect, and all persons who obtained coverage under the general permit before its expiration shall retain coverage under the general permit until there has been a final permit decision on the general permit.

(D) In the event the department makes a decision to not renew the general permit, existing coverage under the general permit shall continue under the terms of the expired permit until a final decision is reached for an individual permit.

(6)(A) If a general permit is appealed and the general permit expires before the final decision by the director or by the commission to renew or not renew the general permit, the terms and conditions of the general permit shall remain in effect.

(B) All persons who obtained coverage under the general permit before its expiration shall retain coverage under the general permit until there has been a final administrative decision on the general permit.

(C) The director shall not approve new coverage under an expired general permit for any facility for which a notice of intent was not filed before expiration of the general permit.

**History.** Acts 1949, No. 472, [Part 1], § 3; 1961, No. 120, § 4; 1975, No. 743, § 4; 1979, No. 680, § 1; 1981, No. 826, § 1; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 13; 1993, No. 165, § 13; 1995, No. 384, §§ 2, 3, 6-9; 1995, No. 895, § 2; 1997, No. 1219, § 5; 1997, No. 1312, § 1; 1999, No. 229, § 1; 1999, No. 1164, § 20; 2007, No. 832, § 1; 2007, No. 1005, § 2; 2009, No. 369, § 1; 2009, No. 409, § 1; 2011, No. 731, § 1.

**Publisher's Notes.** For legislative purpose of Acts 1961, No. 120, see Publisher's Notes to § 8-4-202.

In Acts 1975, No. 743, § 1, the General Assembly found and declared that since the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.), provides for a permit system (National Pollutant Discharge Elimination System) to regulate the discharge of pollutants to the waters of the United States and pro-

vides that permits may be issued by states which are authorized to implement the provisions of that act, it was in the interest of the people of the State of Arkansas to amend the Arkansas Water and Air Pollution Control Act, as amended (§§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-314), in a manner so as to provide required legal authority to the State of Arkansas, through the Department of Pollution Control and Ecology, to implement the provisions of the Federal Water Pollution Control Act, as amended, and thereby to continue in effect the state permit program for the prevention and elimination of pollution of all waters of the state, including navigable waters.

**Amendments.** The 2007 amendment by No. 832 inserted present (b), redesignated the remaining subdivisions accordingly, and added present (j); substituted

“(c)(1)” for “(b)(1)” in present (c)(2); substituted “(e)” for “(d)” in present (e)(3); and substituted “(c) and (d)” for “(b) and (c)” in present (i).

The 2007 amendment by No. 1005 added (k).

The 2009 amendment by No. 369 inserted (c) and redesignated the remaining subsections accordingly; substituted “(d)(1)” for “(c)(1)” in (d)(2); substituted “subsection (f)” for “subsection (e)” in (f)(3); substituted “(d) and (e)” for “(c) and (d)” in (j); and made minor stylistic changes.

The 2009 amendment by No. 409 rewrote (b).

The 2011 amendment added (m).

**Cross References.** Permit fees for air, water, and solid waste pollution control activities, § 8-1-101 et seq.

## CASE NOTES

### ANALYSIS

**In General.**

**Permit Conditions.**

**In General.**

The Arkansas Pollution Control and Ecology Commission's permit decisions are decisions the Arkansas Pollution Control and Ecology Commission is charged with administering pursuant to the police powers of the state and this section. *Enviroclean, Inc. v. Arkansas Pollution Control & Ecology Comm'n*, 314 Ark. 98, 858 S.W.2d 116 (1993).

As the agency charged with administering the Water and Air Pollution Control Act, the Arkansas Pollution Control and Ecology Commission is given authority to issue, modify, and revoke permits regulating the emission of air pollutants under

this section and § 8-4-304. *Enviroclean, Inc. v. Arkansas Pollution Control & Ecology Comm'n*, 314 Ark. 98, 858 S.W.2d 116 (1993).

**Permit Conditions.**

Where a corporation with an incinerator permit transferred all of its stock to a second corporation, there was substantial evidence to support the Arkansas Pollution Control and Ecology Commission's conclusion that the first corporation thereby transferred its permitted facility to the second corporation, a transfer prohibited by the permit. *Enviroclean, Inc. v. Arkansas Pollution Control & Ecology Comm'n*, 314 Ark. 98, 858 S.W.2d 116 (1993).

**Cited:** *Arkansas Comm'n of Pollution Control & Ecology v. Husky Indus., Inc.*, 293 Ark. 249, 737 S.W.2d 157 (1987).

## 8-4-204. Permits — Revocation.

The Arkansas Department of Environmental Quality or its successor is given and charged with the power and duty to revoke, modify, or suspend, in whole or in part, for cause any permit issued under this chapter, including, without limitation:

- (1) Violation of any condition of the permit;
- (2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or



(3) A change in any applicable regulation or a change in any preexisting condition affecting the nature of the discharge that requires either a temporary or permanent reduction or elimination of the permitted discharge.

**History.** Acts 1949, No. 472, [Part 1], § 3; 1975, No. 743, § 4; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 14; 1993, No. 165, § 14; 1997, No. 1219, § 5; 1999, No. 1164, § 21.

**Publisher's Notes.** For legislative findings and declarations for Acts 1975, No. 743, see Publisher's Notes to § 8-4-203.

### CASE NOTES

#### Violations.

Where a corporation with an incinerator permit transferred all of its stock to a second corporation, there was substantial evidence to support the Arkansas Pollution Control and Ecology Commission's conclusion that the first corporation thereby transferred its permitted facility

to the second corporation, a transfer prohibited by the permit. *Enviroclean, Inc. v. Arkansas Pollution Control & Ecology Comm'n*, 314 Ark. 98, 858 S.W.2d 116 (1993).

**Cited:** *Arkansas Comm'n of Pollution Control & Ecology v. Husky Indus., Inc.*, 293 Ark. 249, 737 S.W.2d 157 (1987).

### 8-4-205. Permits — Hearings upon denial, revocation, or modification and other permit actions.

(a) Any person that is denied a permit by the Director of the Arkansas Department of Environmental Quality or that has a permit revoked or modified or a request for permit transfer or modification denied shall be afforded an opportunity for a hearing by the Arkansas Pollution Control and Ecology Commission in connection therewith, upon written application made within thirty (30) days after service of notice of the denial, revocation, or modification.

(b)(1) Only those interested persons, other than the applicant, that have submitted comments on the record regarding a proposed permit action during the public comment period shall have standing to request a hearing by the commission in connection therewith, upon written application made within thirty (30) days after the date of the Arkansas Department of Environmental Quality's final decision regarding the permit action.

(2) No interested party requesting a hearing under subsection (b) of this section may raise any issue in the hearing that was not raised in the public comments unless the party raising the issue shows good cause why such issue could not, with reasonable diligence, have been discovered and presented during the public comment period. The limitation in this subdivision (b)(2) shall not restrict the issues that may be addressed by the applicant in any appeal.

(3) A request for a hearing shall identify the permit action in question and its date and must include a complete and detailed statement identifying the legal and factual objections to the permit action.

(c)(1)(A) Within thirty (30) days of the date the request for a hearing is filed with the commission secretary, a preliminary hearing will be

conducted in the name of the commission by the commission's authorized hearing officer.

(B) Within a reasonable time after the preliminary hearing, the hearing officer shall enter a written decision determining whether the parties qualify as proper parties under subdivision (b)(1) of this section and whether the request conforms with the requirements under subdivisions (b)(2) and (3) of this section.

(C) Any party aggrieved by the decision entered pursuant to this subsection may, within ten (10) business days, request review by the commission.

(2)(A) Any contested decision and any final recommended decision of the hearing officer shall be transmitted to the commission.

(B) The commission shall consider the recommended decision of the hearing officer and shall either affirm the decision in whole or in part or reverse the decision in whole or in part.

(3) At this preliminary hearing, the hearing officer shall weigh the equities of any request for expedited review and advance the case on the administrative docket as circumstances permit.

(4) The commission shall review the director's decision de novo.

(5) The hearing officer shall schedule the hearing and other proceedings such that the appeal will be submitted to the commission for final commission action within one hundred twenty (120) days after the preliminary hearing unless the parties mutually agree to a longer period of time or the hearing officer establishes a longer period of time for just cause.

(6) During the pendency of the appeal to the commission:

(A) The denial of a permit shall stand;

(B) The issuance, modification, or revocation of a permit or that part of a permit that is the subject of the appeal shall be stayed; and

(C) Notwithstanding subdivisions (c)(6)(A) and (B) of this section, upon application by any party, the commission may provide for a stay, modify the terms of a stay, or terminate a stay under appropriate circumstances to avoid substantial prejudice to any party.

(7) The decision of the commission is final, and only those persons that are parties to the administrative appeal under this section shall have standing to appeal a permitting decision to circuit court as provided for in §§ 8-4-222 — 8-4-229.

**History.** Acts 1949, No. 472, [Part 1], § 5; 1973, No. 262, § 7; A.S.A. 1947, § 82-1906; Acts 1991, No. 744, § 4; 1993, No. 163, § 15; 1993, No. 165, § 15; 1995, No. 384, § 10; 1999, No. 1164, § 22.

**Publisher's Notes.** For legislative purpose of Acts 1973, No. 262, see Publisher's Notes to § 8-4-202.

**Cross References.** Administrative procedures and appeals in actions involving hazardous substances, § 8-7-506.

Hazardous substance remedial action trust fund, procedures for appeal, § 8-7-519.

## CASE NOTES

## ANALYSIS

Construction.  
Statement of Objections.

**Construction.**

The right to public participation in hearings before the Department of Pollution Control and Ecology under Arkansas law is comparable to 33 U.S.C. § 1319(g), especially in view of 40 C.F.R. § 123.27(d). *Arkansas Wildlife Fed'n v. ICI Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff'd*, *Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376 (8th Cir. 1994).

**Statement of Objections.**

Because the organizations' objections, that the contractor would not operate and

maintain the facility for disposal of chemical weapons in compliance with the air and hazardous-waste permits and applicable law and the emergency response and contingency planning was inadequate, were not specifically mentioned, those claims were not properly raised for appellate review under subdivision (b)(3). *Pine Bluff for Safe Disposal v. Ark. Pollution Control & Ecology Comm'n*, 354 Ark. 563, 127 S.W.3d 509 (2003).

**Cited:** *Commission on Pollution Control & Ecology v. James*, 264 Ark. 144, 568 S.W.2d 27 (1978).

### 8-4-206. State water pollution control agency — General authority.

(a) In addition to any other powers which it may have under this chapter or any other legislative act, the Arkansas Department of Environmental Quality is authorized and empowered to act as the "state water pollution control agency" for the State of Arkansas for the purposes of the Federal Water Pollution Control Act Amendments of 1972.

(b) As the state water pollution control agency, the department may, among other things, approve projects for the construction of disposal systems for the purposes of loans and grants from the United States Environmental Protection Agency or any other federal agency and may take any other action necessary or appropriate to secure for the state the benefits of the federal act.

**History.** Acts 1949, No. 472, [Part 1], § 3; Acts 1973, No. 262, § 5; 1975, No. 743, § 5; A.S.A. 1947, § 82-1904; Acts 1999, No. 1164, § 23.

**Publisher's Notes.** For legislative purpose of Acts 1973, No. 262, see Publisher's Notes to § 8-4-202.

For legislative findings and declaration for Acts 1975, No. 743, see Publisher's Notes to § 8-4-203.

**U.S. Code.** The Federal Water Pollution Control Act Amendments of 1972, referred to in this section, are codified primarily as 33 U.S.C. § 1251 et seq.

### 8-4-207. State water pollution control agency — Powers and duties generally.

Without limiting the generality of the provisions of this chapter or of the powers which the Director of the Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission may have under this or any other legislative act:



(1)(A) The director is authorized to require conditions in permits issued under this chapter regarding the achievement of effluent limitations based upon the application of such levels of treatment technology and processes as are required under the federal act or any more stringent effluent limitations necessary to meet water quality criteria or toxic standards established pursuant to any state or federal law or regulation. Such effluent limitations shall be achieved in the shortest reasonable period of time consistent with state law and the federal act and any regulations or guidelines promulgated thereunder.

(B) The director is further authorized to set and revise schedules of compliance and include such schedules within the terms and conditions of the permits and prescribe other terms and conditions for permits issued under this chapter to assure compliance with applicable state and federal effluent limitations and water quality criteria, including requirements concerning recording, reporting, monitoring, entry, inspection, and sampling as provided in this chapter and such other requirements as are consistent with the purposes of this chapter;

(2) The director shall not issue a permit under this chapter if the discharge of any term of the permit would violate the provisions of any federal law or rule or regulation promulgated thereunder, including the duration of such permit;

(3) Permits for publicly owned treatment works shall include as a condition for the permit that the permittee provide information to the director concerning new introductions of pollutants or substantial changes in the volume or character of pollutants, whether sewage, industrial waste, or other wastes are being introduced into such treatment works, and appropriate measures to establish and ensure compliance by industrial users with any system of user charges required under state or federal law or any regulations or guidelines promulgated thereunder;

(4) The director is authorized to apply and enforce toxic effluent standards and pretreatment standards against industrial users of publicly owned treatment works for the introduction into such treatment works of sewage, industrial wastes, or other wastes which interfere with, pass through, or otherwise are incompatible with such treatment works;

(5) The director and the commission shall ensure public notice, public participation, and an opportunity for public hearing in respect to National Pollutant Discharge Elimination System permit applications and actions related to them in accordance with applicable state and federal law and rules and regulations; and

(6)(A)(i) Any records, reports, or information obtained under this chapter and any permits, permit applications, and related documentation shall be available to the public for inspection and copying.

(ii) However, information submitted to the Arkansas Department of Environmental Quality may be claimed as confidential if its disclosure would divulge trade secrets.

(B) The department shall deny any claim for confidentiality for the name and address of any permit applicant or permittee or for any National Pollutant Discharge Elimination System permit applications, National Pollutant Discharge Elimination System permits, and effluent data.

(C) Information required by National Pollutant Discharge Elimination System application forms, including any information submitted on the forms themselves and any attachments used to supply information required by the forms, shall not be claimed confidential nor afforded this protection.

(D) Any person adversely affected by a determination by the department on a claim of confidentiality may appeal the determination as provided in §§ 8-4-222 and 8-4-223.

**History.** Acts 1949, No. 472, [Part 1], § 3; A.S.A. 1947, § 82-1904; Acts 1987, No. 617, § 1; 1993, No. 163, § 16; 1993, No. 165, § 16; 1999, No. 1164, § 24.

**Publisher's Notes.** For legislative findings and declarations for Acts 1975, No. 743, see Publisher's Notes to § 8-4-203.

#### CASE NOTES

##### **Administrative Hearing.**

Where, pursuant to this section, Department of Pollution Control and Ecology sought to obtain assessment of a civil penalty by the circuit court against defendant company without filing any civil action under § 8-4-103(b), and there was no current violation at the time the plaintiff

sought the penalty, trial court properly dismissed the action on the ground that it had no jurisdiction to consider the matter prior to an administrative hearing. Arkansas Dep't of Pollution Control & Ecology v. B.J. McAdams, Inc., 303 Ark. 144, 792 S.W.2d 611 (1990).

#### **8-4-208. State water pollution control agency — Administration of permit program generally.**

(a) The Arkansas Department of Environmental Quality is authorized, subject to the approval of the Governor, to administer on behalf of the state its own permit program for discharges into navigable waters within its jurisdiction in lieu of that of the United States Environmental Protection Agency. The department is also authorized to submit to the Administrator of the United States Environmental Protection Agency for approval a full and complete description of the program which the department proposes to establish and administer under state law, as provided by § 402(b) of the Federal Water Pollution Control Act Amendments of 1972. To that end, the department and the Arkansas Pollution Control and Ecology Commission are vested with all necessary authority and power to meet the requirements of § 402(b) of the Federal Water Pollution Control Act Amendments of 1972 and the guidelines promulgated by the United States Environmental Protection Agency pursuant to § 304(h)(2) of the Federal Water Pollution Control Act Amendments of 1972, to engage in an approved continuing planning process under § 303(e) of the Federal Water Pollution Control Act Amendments of 1972, and to perform any and all acts necessary to



carry out the purposes and requirements of the Water Pollution Control Act Amendments of 1972 relating to this state's participation in the National Pollutant Discharge Elimination System established under the Federal Water Pollution Control Act Amendments of 1972, subject to all restrictions contained in the federal act and guidelines.

(b) The department shall further have the authority to accept a delegation of authority from the Administrator of the United States Environmental Protection Agency under the Federal Water Pollution Control Act Amendments of 1972 and to exercise and enforce the authority delegated.

(c) Any public hearing that may be held by the Director of the Arkansas Department of Environmental Quality preliminary to acting on a permit application as required by the Federal Water Pollution Control Act Amendments of 1972 and guidelines, unless otherwise designated in the notice of hearing, shall be for informational purposes only and shall not be deemed a hearing before the commission within the meaning of § 8-4-205. No appeal may be taken therefrom.

**History.** Acts 1949, No. 472, [Part 1], § 3; 1973, No. 262, § 5; 1975, No. 743, § 5; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 17; 1993, No. 165, § 17; 1999, No. 1164, § 25.

**Publisher's Notes.** For legislative purpose of Acts 1973, No. 262, see Publisher's Notes to § 8-4-202.

For legislative findings and declarations for Acts 1975, No. 743, see Publisher's Notes to § 8-4-203.

**U.S. Code.** Sections 402(b) and 303(e) of the Federal Water Pollution Control Act Amendments of 1972, referred to in this

section, are codified as 33 U.S.C. § 1342(b) and 33 U.S.C. § 1313(e), respectively.

The guidelines promulgated by the United States Environmental Protection Agency pursuant to § 304(h) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1314(h)), referred to in this section, appear as 40 CFR 136.1 et seq.

**Cross References.** Requirement of disclosure statement from permit applicants, § 8-1-106(b).

### **8-4-209. State water pollution control agency — Participation of certain persons prohibited in approval of permit applications.**

Any provision of state law to the contrary notwithstanding, no member of the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission or other state agency who receives or has during the previous two (2) years received a significant portion of his or her income directly or indirectly from permit holders or applicants for a permit shall participate in the approval of the National Pollutant Discharge Elimination System permit applications or portions thereof.

**History.** Acts 1949, No. 472, [Part 1], § 2; 1975, No. 743, § 5; A.S.A. 1947, § 82-1904.

**Publisher's Notes.** For legislative purpose of Acts 1973, No. 262, see Publisher's Notes to § 8-4-202.



**8-4-210. Investigations and hearings generally.**

(a) The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to conduct such investigations and hold such hearings as it may deem advisable and necessary for the discharge of its duties under this chapter and to authorize any member, employee, or agent appointed by it to conduct such investigations or hold such hearings.

(b) In any such hearing or investigation, any member of the commission or any employee or agent thereto authorized by the commission may administer oaths, examine witnesses, and issue, in the name of the commission, subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearing or investigation.

(c) Witnesses shall receive the same fees and mileage as in civil actions, to be paid out of funds appropriated to the commission.

(d) In case of contumacy or refusal to obey a subpoena issued under this section or refusal to testify the circuit court of the county where the proceeding is pending or in which the person guilty of such contumacy or refusal to obey is found or resides shall have jurisdiction, upon application of the commission or its authorized member, employee, agent, or hearing officer, to issue to the person an order requiring him or her to appear and testify or produce evidence, as the case may require. Any failure to obey the order of the court may be punished by the court as contempt.

(e) In accordance with the powers set forth in subsections (a)-(d) of this section, the commission is authorized to conduct adjudicatory hearings providing an aggrieved person with standing a forum for contesting any decision of the Arkansas Department of Environmental Quality. For the purposes of such hearings, the commission's jurisdiction shall be construed as including all regulatory programs vested with the department.

**History.** Acts 1949, No. 472, [Part 1], § 3; A.S.A. 1947, § 82-1904; Acts 1997, No. 1219, § 5.

**CASE NOTES****Construction.**

The right to public participation in hearings before the Department of Pollution Control and Ecology under Arkansas law is comparable to 33 U.S.C. § 1319(g),

especially in view of 40 C.F.R. § 123.27(d). *Arkansas Wildlife Fed'n v. ICI Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff'd*, *Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376 (8th Cir. 1994).

**8-4-211. Declaratory orders.**

(a) Any permittee or person subject to regulation may petition the Arkansas Pollution Control and Ecology Commission for a declaratory order as to the application of any rule, statute, permit, or order enforced

by the Arkansas Department of Environmental Quality or the commission.

(b) Such petitions shall be processed for adjudicatory review in the same manner as appeals under the procedures prescribed by §§ 8-1-203, 8-4-205, 8-4-212, and 8-4-218 — 8-4-229.

**History.** Acts 1949, No. 472, [Part 1], § 3; 1961, No. 120, § 3; A.S.A. 1947, § 82-1904; Acts 1995, No. 384, § 4; 1997, No. 1219, § 5.

**Publisher's Notes.** For legislative purpose of Acts 1961, No. 120, see Publisher's Notes to § 8-4-202.

### CASE NOTES

**Cited:** *Romine v. Arkansas Dep't of Env'tl. Quality*, 342 Ark. 380, 40 S.W.3d 731 (2000).

#### 8-4-212. Adjudicatory hearings and orders.

(a) No final order resolving a contested decision of the Arkansas Department of Environmental Quality shall be issued until the Arkansas Pollution Control and Ecology Commission has provided aggrieved persons that have standing the opportunity for an adjudicatory hearing upon the matter.

(b) Any person that will be directly affected by the order shall have the right to be heard at the hearing, to submit evidence, and to be represented by counsel.

(c) Written notice specifying the time and place of the hearing shall be served by the commission in the manner provided by § 8-4-214 upon all persons known by it to be directly affected by the order, not less than ten (10) days before the date of the hearing.

(d) A copy of any order issued by the commission after the hearing shall also be served upon the persons.

**History.** Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 1997, No. 1219, § 5.

### CASE NOTES

#### **Construction.**

The right to public participation in hearings before the Department of Pollution Control and Ecology under Arkansas law is comparable to 33 U.S.C. § 1319(g),

especially in view of 40 C.F.R. § 123.27(d). *Arkansas Wildlife Fed'n v. ICI Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff'd*, *Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376 (8th Cir. 1994).

#### 8-4-213. Conclusiveness of commission actions.

(a) If no appeal is taken from an order, a rule, a regulation, or other decision of the Arkansas Pollution Control and Ecology Commission as provided in §§ 8-4-222 — 8-4-229, or if the action of the commission is affirmed on appeal, then the action of the commission in the matter

shall be deemed conclusive, and the validity and reasonableness thereof shall not be questioned in any other action or proceeding.

(b) However, this section shall not preclude the authority of the commission to modify or rescind its actions.

**History.** Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 1993, No. 163, § 18; 1993, No. 165, § 18.

#### CASE NOTES

**Cited:** *Hamilton v. Arkansas Pollution Control & Ecology Comm'n*, 333 Ark. 370, 969 S.W.2d 653 (1998).

#### 8-4-214. Service of notice, orders, etc.

(a) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the Arkansas Pollution Control and Ecology Commission may be served upon any person affected thereby, personally or by publication. Proof of the service may be made in like manner as in the case of service of a summons in a civil action, with the proof to be filed in the office of the commission.

(b)(1) Service may be had by mailing a copy of the notice, order, or other instrument, by certified mail, directed to the person affected at his or her last known post office address as shown by the files or records of the commission. Proof of the mailing may be made by the affidavit of the person that did the mailing, filed in the office of the commission.

(2) Service by publication shall be accomplished by one (1) insertion in a newspaper of general circulation in the area affected.

(c) Every certificate or affidavit of service made and filed as provided in this section shall be prima facie evidence of the facts therein stated, and a certified copy thereof shall have like force and effect.

**History.** Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906.

#### 8-4-215. Intergovernmental cooperation.

(a) The Arkansas Department of Environmental Quality or its successor and the Arkansas Pollution Control and Ecology Commission, so far as it is not inconsistent with its duties under the laws of this state, may assist and cooperate with any agency of another state or the United States in any matter relating to water pollution control.

(b)(1) The commission or the department may receive and accept money, property, or services from any person or from any agency described in subsection (a) of this section or from any other source for any water pollution control purpose within the scope of its functions under this chapter.

(2) All moneys so received shall be used for the operation and activities of the commission or department and for no other purposes.



(c)(1) The department or its successor may enter into agreements with the responsible authorities of the United States or other states, subject to approval by the Governor, relative to policies, methods, means, and procedures to be employed to control pollution of any interstate waters and may carry out these agreements by appropriate general and special orders.

(2)(A) This power shall not be deemed to extend to the modification of any agreement with any other state concluded by direct legislative act.

(B) However, unless otherwise provided, the department shall be the agency for the administration and enforcement of any such legislative agreement.

**History.** Acts 1949, No. 472, [Part 1], § 6; 1973, No. 262, § 8; A.S.A. 1947, § 82-1907; Acts 1997, No. 1219, § 5; 1999, No. 1164, § 26.

**Publisher's Notes.** For legislative purpose of Acts 1973, No. 262, see Publisher's Notes to § 8-4-202.

#### 8-4-216. Information and inspections.

(a) The owner or operator of or any contributor of sewage, industrial wastes, or other wastes to any disposal system or an industrial user of a publicly owned treatment system, when requested by the Director of the Arkansas Department of Environmental Quality, shall furnish to the Arkansas Department of Environmental Quality any information that is relevant to the subject of this chapter. The owner or operator shall establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, including, when appropriate, biological monitoring methods, sample such effluents, and provide such other information as the director may reasonably require.

(b) The department or any authorized employee or agent of the department may examine and copy any book, papers, records, or memoranda pertaining to the operation of a disposal system.

(c) Whenever it shall be necessary for the purpose of this chapter, the department or any authorized member, employee, or agent of the department may enter upon any public or private property for the purpose of obtaining information or conducting surveys or investigations.

**History.** Acts 1949, No. 472, [Part 1], § 4; 1973, No. 262, § 6; 1975, No. 743, § 6; A.S.A. 1947, § 82-1905; Acts 1999, No. 1164, § 27.

pose of Acts 1973, No. 262, see Publisher's Notes to § 8-4-202.

For legislative findings and declarations for Acts 1975, No. 743, see Publisher's Notes to § 8-4-203.

**Publisher's Notes.** For legislative pur-

#### 8-4-217. Unlawful actions.

(a) It shall be unlawful for any person to:

(1) Cause pollution, as defined in § 8-4-102, of any of the waters of this state;

(2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;

(3) Violate any provisions of this chapter or of any rule, regulation, or order adopted by the Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Arkansas Department of Environmental Quality;

(4) Knowingly to make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter;

(5) Falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter; or

(6) Sell, offer or expose for sale, give, or furnish any synthetic detergent or detergent containing any phosphorus, expressed as elemental phosphorus, including synthetic detergents or detergents manufactured for use as laundry or dishwashing detergents within this state from and after January 1, 1994, except as provided below:

(A) Products that may be used, sold, manufactured, or distributed for use or sale regardless of phosphorus content include:

(i) A detergent:

(a) Used in dairy, beverage, or food processing cleaning equipment;

(b) Used in hospitals, veterinary hospitals, clinics, health care facilities, or in agricultural production;

(c) Used by industry for metal cleaning or reconditioning;

(d) Manufactured, stored, or distributed for use or sale outside the state;

(e) Used in any laboratory, including a biological laboratory, research facility, chemical laboratory, and engineering laboratory;

(f) Used in a commercial laundry that provides laundry services for a hospital, health care facility, or veterinary hospital; or

(g) Used for surface cleaning, appliance cleaning, or specialty home cleaning, and not for dishwashing or laundry;

(ii) A phosphoric acid product, including a sanitizer, brightener, acid cleaner, or metal conditioner; and

(iii) A substance the department excludes from the phosphorus limitations of this section based on a finding that compliance with this section would:

(a) Create a significant hardship on the user; or

(b) Be unreasonable because of the lack of an adequate substitute cleaning agent that could be substituted for the subject cleaning agent without significant cost or effect differences;

(B) A person may use, sell, manufacture, or distribute for use or sale a laundry detergent that contains one-half percent (.5%) phosphorus or less that is incidental to manufacturing; and

(C) A person may use, sell, manufacture, or distribute for use or sale a dishwashing detergent that contains eight and seven-tenths percent (8.7%) phosphorus or less by weight.

(b)(1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the department:

(A) To construct, install, modify, or operate any disposal system or any part thereof, or any extension or addition thereto, that will discharge into any of the waters of this state;

(B) To increase in volume or strength any sewage, industrial waste, or other wastes in excess of the permissive discharges specified under any existing permit;

(C) To construct, install, or operate any building, plant, works, establishment, or facility, or any extension or modification thereof, or addition thereto, the operation of which would result in discharge of any wastes into the waters of this state or would otherwise alter the physical, chemical, or biological properties of any waters of this state in any manner not already lawfully authorized;

(D) To construct or use any new outlet for the discharge of any wastes into the waters of this state; or

(E) To discharge sewage, industrial waste, or other wastes into any of the waters of this state.

(2) The department may require the submission of such plans, specifications, and other information as it deems relevant in connection with the issuance of disposal permits.

**History.** Acts 1949, No. 472, [Part 1], § 8; 1961, No. 120, § 7; 1973, No. 262, § 9; 1975, No. 743, § 7; A.S.A. 1947, § 82-1908; Acts 1993, No. 454, § 1; 1993, No. 461, § 1; 1997, No. 1219, § 5.

**A.C.R.C. Notes.** As originally amended by identical Acts 1993, Nos. 454 and 461, § 1, subdivisions (a)(6)(B) and (a)(6)(C) began "After January 1, 1994."

**Publisher's Notes.** For legislative purpose of Acts 1961, No. 120, see Publisher's Notes to § 8-4-202.

For legislative purpose of Acts 1973, No. 262, see Publisher's Notes to § 8-4-202.

For legislative findings and declarations for Acts 1975, No. 743, see Publisher's Notes to § 8-4-203.

## RESEARCH REFERENCES

**Ark. L. Rev.** Noble and Looney, The Emerging Legal Framework for Animal Agricultural Waste Management in Arkansas, 47 Ark. L. Rev. 159.

**U. Ark. Little Rock L.J.** Wright, In

Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Environment and Small Business, 13 U. Ark. Little Rock L.J. 417.

## CASE NOTES

### ANALYSIS

Escape of Dioxin.  
Violations.

### Escape of Dioxin.

Where the record showed that dioxin was escaping from a plant site in quantities that under an acceptable, but unproved, theory could be considered as

teratogenic, mutagenic, fetotoxic, and carcinogenic, there was a reasonable medical concern over the public health, and therefore the escape of dioxin into a creek and bayou from the plant site constituted an imminent and substantial endangerment to the health of persons and was subject to abatement. *United States v. Vertac Chem. Corp.*, 489 F. Supp. 870 (E.D. Ark. 1980), *aff'd*, 961 F.2d 796 (8th Cir. 1992).



**Violations.**

Where a corporation with an incinerator permit transferred all of its stock to a second corporation, there was substantial evidence to support the Arkansas Pollution Control and Ecology Commission's conclusion that the first corporation thereby transferred its permitted facility

to the second corporation, a transfer prohibited by the permit. *Enviroclean, Inc. v. Arkansas Pollution Control & Ecology Comm'n*, 314 Ark. 98, 858 S.W.2d 116 (1993).

**Cited:** *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

### 8-4-218. Violations of chapter, orders, rules, etc. — Hearings — Notice.

(a) Whenever the Arkansas Department of Environmental Quality or its successor determines that there are reasonable grounds to believe that there has been a violation of any of the provisions of this chapter or any order, rule, or regulation of the Arkansas Pollution Control and Ecology Commission, it may give written notice to the alleged violator specifying the causes of complaint.

(b) The notice shall require that the matters complained of be corrected or that the alleged violator appear before the commission at a time and place specified in the notice and answer the charges complained of.

(c) The notice shall be served upon the alleged violator in accordance with the provisions of § 8-4-214 not less than ten (10) days before the time set for the hearing.

**History.** Acts 1949, No. 472, [Part 1], § 5; 1961, No. 120, § 6; A.S.A. 1947, § 82-1906; Acts 1997, No. 1219, § 5; 1999, No. 1164, § 28.

**Publisher's Notes.** For legislative purpose of Acts 1961, No. 120, see Publisher's Notes to § 8-4-202.

### CASE NOTES

**Construction.**

The right to public participation in hearings before the Department of Pollution Control and Ecology under Arkansas law is comparable to 33 U.S.C. § 1319(g),

especially in view of 40 C.F.R. § 123.27(d). *Arkansas Wildlife Fed'n v. ICI Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff'd*, *Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376 (8th Cir. 1994).

### 8-4-219. Violations of chapter, orders, rules, etc. — Hearings — Conduct.

(a) The Arkansas Pollution Control and Ecology Commission shall afford an opportunity for a fair hearing to the alleged violator at the time and place specified in the notice or any modification of the notice.

(b) The hearings may be conducted by the commission or its hearing officer, who shall have the power and authority to conduct hearings in the name of the commission at any time and place.

(c) A record or summary of the proceedings of the hearings shall be taken and filed at the office of the commission.

**History.** Acts 1949, No. 472, [Part 1], § 5; 1961, No. 120, § 6; A.S.A. 1947, § 82-1906; Acts 1997, No. 1219, § 5.

**Publisher's Notes.** For legislative purpose of Acts 1961, No. 120, see Publisher's Notes to § 8-4-202.

#### **8-4-220. Violation of chapter, orders, rules, etc. — Order of department without hearing.**

(a) When the Arkansas Department of Environmental Quality or its successor finds that an emergency exists requiring immediate action to protect the public health or welfare it may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as it deems necessary to meet the emergency.

(b) Notwithstanding the provisions of §§ 8-4-218 and 8-4-219, the order shall be effective immediately.

(c) Any person to which the order is directed shall comply immediately but, on application to the Arkansas Pollution Control and Ecology Commission, shall be afforded a hearing within ten (10) days after receipt of a written request therefor.

(d) On the basis of the hearing, the commission shall continue the order in effect, revoke it, or modify it.

**History.** Acts 1949, No. 472, [Part 1], § 5; 1961, No. 120, § 6; A.S.A. 1947, § 82-1906; Acts 1997, No. 1219, § 5; 1999, No. 1164, § 29.

**Publisher's Notes.** For legislative purpose of Acts 1961, No. 120, see Publisher's Notes to § 8-4-202.

#### **8-4-221. Violations of chapter, orders, rules, etc. — Hearing — Orders.**

On the basis of the evidence produced at the hearing, the Arkansas Pollution Control and Ecology Commission shall enter such order as in its opinion will best further the purposes of this chapter. A copy of the order shall be served upon the alleged violator and on such other persons as shall have appeared at the hearing and made written request for notice of the order, in the manner provided by § 8-4-214. The order of the commission shall become final and binding on all parties unless appealed, as provided in §§ 8-4-222 — 8-4-229, within thirty (30) days after service of the order.

**History.** Acts 1949, No. 472, [Part 1], § 5; 1961, No. 120, § 6; A.S.A. 1947, § 82-1906; Acts 1993, No. 163, § 19; 1993, No. 165, § 19.

**Publisher's Notes.** For legislative purpose of Acts 1961, No. 120, see Publisher's Notes to § 8-4-202.

#### **8-4-222. Appeals — Entitlement.**

An appeal may be taken from any final order, rule, regulation, or other final determination of the Arkansas Pollution Control and Ecology Commission by those parties that have standing and have exhausted their administrative appeals to the circuit court of the county in which the business, industry, municipality, or thing involved is situated, in the manner provided in §§ 8-4-223 — 8-4-229.

**History.** Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 1993, No. 163, § 20; 1993, No. 165, § 20.

### CASE NOTES

#### **Construction.**

The Arkansas provisions for judicial review are comparable to those found in 33 U.S.C. § 1319(g)(8). *Arkansas Wildlife*

*Fed'n v. ICI Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff'd*, *Arkansas Wildlife Fed'n v. ICI Ams.*, 29 F.3d 376 (8th Cir. 1994).

### **8-4-223. Appeals — Notice.**

(a)(1) Within thirty (30) days after service of a copy of the final order, rule, regulation, or other final determination of the Arkansas Pollution Control and Ecology Commission, the appellant may file a notice of appeal with the circuit court of the county in which the business, industry, municipality, or thing involved is situated.

(2) A copy of the notice of appeal shall be served upon the secretary of the commission by personal delivery or by mail with a return receipt requested within ten (10) days of filing with the circuit court.

(b)(1) The notice of appeal:

(A) Shall state the action of the commission appealed from;

(B) Shall specify the grounds of the appeal, including points of both law and fact that are asserted or questioned by the appellant; and

(C) May contain any other allegations or denials of fact pertinent to the appeal.

(2) The notice of appeal shall state an address within the state at which service of a response to the notice of appeal and other papers in the matter may be made upon the appellant.

(c) Upon filing the notice of appeal with the clerk of the circuit court, the circuit court shall have jurisdiction of the appeal.

**History.** Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 1997, No. 896, § 1; 1997, No. 1219, § 5.

### CASE NOTES

#### **Jurisdiction.**

Service of notice of appeal on a party to the litigation does not give the court jurisdiction; the court has jurisdiction only

when the notice is filed with the clerk of the circuit court. *Cash v. Arkansas Comm'n on Pollution Control & Ecology*, 300 Ark. 317, 778 S.W.2d 606 (1989).

### **8-4-224. Appeals — Parties.**

(a)(1) The appellant and the Arkansas Pollution Control and Ecology Commission shall, in all cases, be deemed the original parties to an appeal.

(2) The state, through the Attorney General or any other person affected, may become a party by intervention as in a civil action, upon showing cause therefor.



(3) The Attorney General shall represent the commission, if requested, upon all these appeals, unless he or she appeals or intervenes in behalf of the state.

(b) No bond or deposit for costs shall be required of the state or of the commission upon any such appeal or upon any subsequent appeal to the Supreme Court or other court proceedings pertaining to the matter.

**History.** Acts 1949, No. 472, [Part 1],  
§ 5; A.S.A. 1947, § 82-1906.

#### **8-4-225. Appeals — Venue.**

The venue of an appeal may be changed by order of the court upon written consent of the parties or for cause shown, after hearing upon notice to all parties, to the circuit court of any county in which the order, rule, regulation, or decision appealed from would take effect.

**History.** Acts 1949, No. 472, [Part 1],  
§ 5; A.S.A. 1947, § 82-1906.

#### **8-4-226. Appeal — Response by commission and record.**

(a)(1) Within thirty (30) days after service of the notice of appeal on the Arkansas Pollution Control and Ecology Commission secretary, the Arkansas Pollution Control and Ecology Commission shall file with the clerk of the circuit court having jurisdiction of the appeal a response to the notice of appeal and the record upon which the final order, rule, regulation, or other final determination complained of was entered.

(2) The thirty-day period for filing a response to the notice of appeal and the record by the commission may be extended by the court for cause shown for not more than an additional sixty (60) days.

(3)(A) The record shall consist of:

(i) A copy of any application or petition, all pleadings, or other material paper whereon the action of the commission appealed from was based;

(ii) A statement of any findings of fact, rulings, or conclusions of law made by the commission;

(iii) A copy of the final order, rule, regulation, or other final decision appealed from; and

(iv) All testimony, exhibits, and other evidence submitted to the commission in the case.

(B) The parties to the appeal may stipulate that only a specified portion of the record shall be filed with the circuit court.

(4) A response to the notice of appeal filed by the commission shall consist of any statements, admissions, or denials upon the questions of law or fact raised in the notice of appeal as the commission may deem pertinent.

(b) Within the time allowed for making and filing the response, a copy of the response shall be mailed to or served upon the appellant or the appellant's attorney.

(c)(1) The allegations or new matter in the response shall be deemed to be denied by the appellant unless expressly admitted, and no further pleadings shall be interposed.

(2) Otherwise, the allegations of the notice of appeal and response shall have like effect as the pleadings in a civil action and shall be subject to like proceedings, so far as applicable.

**History.** Acts 1949, No. 472, [Part 1], 1906; Acts 1997, No. 896, § 2; 1997, No. § 5; 1965, No. 183, § 4; A.S.A. 1947, § 82- 1219, § 5.

### CASE NOTES

**Cited:** Gurley v. Mathis, 313 Ark. 412, 856 S.W.2d 616 (1993).

### 8-4-227. Appeal — Review by court.

(a) The appeal shall be heard and determined by the court upon the issues raised by the notice of appeal and response according to the rules relating to the trial of civil actions, so far as applicable.

(b) If, before the date set for the hearing, application is made to the court for leave to present additional evidence and the court finds that the evidence is material and that there were good reasons for failure to present it in the proceeding before the Arkansas Pollution Control and Ecology Commission, then the court may order that the additional evidence be taken before the commission upon such conditions as may be just. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(c)(1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the commission not shown in the record, testimony may be taken before the court.

(2) The court shall, upon request, hear oral argument and receive written briefs.

(d) The court may affirm the decision of the commission or vacate or suspend the decision, in whole or part, and remand the case to the commission for further action in conformity with the decision of the court if the action of the commission is:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the commission's statutory authority;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Not supported by substantial evidence of record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion.

**History.** Acts 1949, No. 472, [Part 1], 1906; Acts 1995, No. 895, § 3; 1997, No. § 5; 1985, No. 284, § 1; A.S.A. 1947, § 82- 896, § 3; 1997, No. 1219, § 5.

## CASE NOTES

## ANALYSIS

Constitutionality.  
 Applicability.  
 Scope of Review.  
 Standard of Review.

**Constitutionality.**

Former provision of this section was unconstitutional to the extent that it authorized the circuit court to review de novo matters of executive discretion. *Arkansas Comm'n on Pollution Control & Ecology v. Land Developers, Inc.*, 284 Ark. 179, 680 S.W.2d 909 (1984) (decision prior to 1985 amendment).

**Applicability.**

Subdivision (d)(5) of this section addresses appeals from the Arkansas Pollution Control and Ecology Commission to circuit court and not appeals to the Arkansas Supreme Court. *Gurley v. Mathis*, 313 Ark. 412, 856 S.W.2d 616 (1993).

**Scope of Review.**

Court erred by substituting its judgment for that of the commission and in exceeding the statutory limits upon its

authority to review the commission's order. *Arkansas Comm'n of Pollution Control & Ecology v. Husky Indus., Inc.*, 293 Ark. 249, 737 S.W.2d 157 (1987).

Finding that the commission "did not give proper consideration" to the threat to the economies of the communities involved posed by "strict compliance" is not a basis upon which review was permitted. *Arkansas Comm'n of Pollution Control & Ecology v. Husky Indus., Inc.*, 293 Ark. 249, 737 S.W.2d 157 (1987).

**Standard of Review.**

Arkansas Pollution Control and Ecology Commission's order approving landfill's application to expand was properly upheld by a trial court pursuant to subsection (d) of this section because the Commission had correctly concluded that the Arkansas Tri-County Solid Waste District Board's denial of a certificate of need due to the geology of the area was improper; there was substantial evidence to support the Commission's decision. *Tri-County Solid Waste Dist. v. Ark. Pollution Control & Ecology Comm'n*, 365 Ark. 368, 230 S.W.3d 545 (2006).

**8-4-228. Appeal — Stay of proceedings.**

(a) The taking effect of any action of the Arkansas Pollution Control and Ecology Commission shall not be stayed by an appeal except by order of the court for cause shown by the appellant.

(b) The granting of a stay may be conditioned upon the furnishing by the appellant of such reasonable security for costs as the court may direct.

(c) A stay may be vacated on application of the commission or any other party after hearing upon notice to the appellant and to such other parties as the court may direct.

**History.** Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906.

**8-4-229. Appeals, proceedings, etc. — Presumptions.**

(a) In any appeal or other proceeding involving any order, rule, regulation, or other decision of the Arkansas Pollution Control and Ecology Commission, the action of the commission shall be prima facie evidence reasonable and valid, and it shall be presumed that all requirements of the law pertaining to the taking thereof have been complied with.



(b) All findings of fact made by the commission shall be prima facie evidence of the matters therein stated.

(c) The burden of proving the contrary of any provision of this subsection shall rest upon the appellant or other party questioning the action of the commission.

**History.** Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906.

### CASE NOTES

#### **Permits.**

Pursuant to subsection (c), the organizations failed to meet their burden of showing that the Arkansas Pollution Control and Ecology Commission's decision affirming the issuance of air and hazardous-waste permits for the construction of a facility to dispose of chemical weapons was erroneous because they failed to show that the issuance of the permits for the

facility would cause air pollution, as defined in § 8-4-303(5); thus, the Commission's decision to issue the permits was supported by substantial evidence and was proper. *Pine Bluff for Safe Disposal v. Ark. Pollution Control & Ecology Comm'n*, 354 Ark. 563, 127 S.W.3d 509 (2003).

**Cited:** *Tri-County Solid Waste Dist. v. Ark. Pollution Control & Ecology Comm'n*, 365 Ark. 368, 230 S.W.3d 545 (2006).

#### **8-4-230. Temporary variances and interim authority.**

(a)(1) Unless otherwise prohibited by preemptive federal law, the Director of the Arkansas Department of Environmental Quality may, for compelling reasons and good cause shown, grant:

(A) Temporary variances from the requirements of any permit issued by the Arkansas Department of Environmental Quality; or

(B) Interim authority to construct or operate during the application review and permit issuance process.

(2) Such temporary variances or interim authority shall not exceed a period of ninety (90) days, except when a longer period is justified by circumstances beyond the applicant's control. The department may grant a request for an extension of a temporary variance or interim authority at any time prior to the expiration date.

(3) The department may require an initial processing fee of two hundred dollars (\$200) for a request for a temporary variance or an interim authority request. This fee shall not be required for requests for an extension of any temporary variance or interim authority.

(b)(1) In considering any request for a temporary variance pursuant to subdivision (a)(1)(A) of this section, the director shall consider:

(A) The environmental and public health effects of the temporary variance; and

(B) Any economic advantage obtained by the party requesting the temporary variance over other similarly situated facilities that are operating in accordance with similar permit conditions and which have not requested a temporary variance.

(2) In addition, the director may take into account the following factors:

(A) Whether strict compliance with permit terms is inappropriate because of conditions beyond the control of the person requesting the temporary variance;

(B) Whether strict compliance would result in the substantial curtailment or closing down of a business, plant, or operation;

(C) Whether the temporary variance request is prompted by recurrent or avoidable compliance problems;

(D) A review of the operational history of the requesting facility; and

(E) Whether the public interest will be served by a temporary variance.

(c) When considering any request for interim authority during the application review and permit issuance process pursuant to subdivision (a)(1)(B) of this section, the director may take into account the following factors in addition to the applicable factors of subsection (b) of this section:

(1) Whether the applicable permitting applications were timely and completely submitted;

(2) Whether there has been a delay in the final permitting action caused by conditions beyond the control of the person requesting the interim authority;

(3) Whether contractual or other business obligations will become due before a proper permit can be issued; and

(4) Whether the public interest will be served by construction or operation during the application review and permit issuance process.

(d) After a review of the applicable factors, the director may:

(1) Grant an unconditional variance or interim authority to the requesting party;

(2) Grant a conditional temporary variance or interim authority to the requesting party. Such conditions shall be designed to be protective of human health and the environment and must be clearly stated or referenced in the temporary variance or interim authority document; or

(3) Deny the request for a temporary variance or interim authority. If a denial is issued, the director shall clearly state the reason or reasons for the denial in a written response to the applicant.

(e)(1) Every director's decision to grant or deny a temporary variance or interim authority to construct or operate shall be publicly noticed within ten (10) business days of the director's decision. The applicant shall be responsible for the expense of publication of any decision to grant a temporary variance or interim authority. The department shall be responsible for the expense of publication of any decision to deny a temporary variance or interim authority.

(2) Any member of the public may object to the director's decision within ten (10) business days of the notice.

(3) Any temporary variance or interim authority granted by the director is contingent upon the right of the public to object.

(4) Any actions taken by the applicant in reliance upon the grant of a temporary variance or interim authority during the application

review and permit issuance process are strictly at the applicant's own risk, and no actions or expenditures by the applicant during this period shall be construed as accruing equities in the applicant's favor.

(5) The ten-day public notice requirement shall not apply to a director's decision to grant an extension of a temporary variance or interim authority.

(f) The director may also for compelling reasons or good cause shown revoke or modify the conditions of any temporary variance or interim authority previously granted.

(g)(1) An applicant that has been denied a temporary variance or interim authority or that had a temporary variance or interim authority revoked or a third party that submitted timely objections during the application review and permit issuance process provided for in subsection (e) of this section may appeal the director's final decision.

(2)(A) Such an action shall be processed as a permit appeal under § 8-4-205.

(B) Provided, however, that:

(i) The decision of the director shall remain in effect during the appeal;

(ii) The adjudicatory review shall be completed as expeditiously as possible; and

(iii) A final decision shall be issued by the Arkansas Pollution Control and Ecology Commission within sixty (60) days unless all parties agree to extend the review time.

(h) Any party aggrieved by a commission decision on a request for a temporary variance or interim authority may appeal as provided by applicable law.

**History.** Acts 1995, No. 943, § 1; 1999, No. 147, § 1.

#### **8-4-231. Effectiveness of regulations or orders.**

This act shall not be construed as impairing the continued effectiveness of any regulations or orders promulgated or issued by the Arkansas Pollution Control and Ecology Commission prior to March 31, 1999. Nor shall this act be construed as extinguishing or otherwise affecting the unexpired terms of any current members of the commission.

**History.** Acts 1997, No. 1219, § 10.

**A.C.R.C. Notes.** Acts 1997, No. 1219, § 2, provided: "‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas

Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial in-



struments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

References to “this chapter” in subchap-

ters 1 and 3 and §§ 8-4-201 to 8-4-230 may not apply to this section which was enacted subsequently.

**Meaning of “this act”.** Acts 1997, No. 1219, codified primarily in subchapters 2 and 3 of chapter 4 and subchapter 2 of chapter 5 of this title. For the full disposition of Acts 1997, No. 1219, see Tables Volume B.

### SUBCHAPTER 3 — AIR POLLUTION

#### SECTION.

- 8-4-301. Legislative intent.
- 8-4-302. Purpose.
- 8-4-303. Definitions.
- 8-4-304. Applicability of water pollution provisions.
- 8-4-305. Exceptions.
- 8-4-306. Political subdivisions preempted — Exception.
- 8-4-307. Private rights unchanged.
- 8-4-308. Industrial secrets confidential.
- 8-4-309. Construction limited — Exception.

#### SECTION.

- 8-4-310. Unlawful actions.
- 8-4-311. Powers generally.
- 8-4-312. Factors in exercise of powers.
- 8-4-313. Variance from regulations.
- 8-4-314. Compliance Advisory Panel — Small Business Stationary Source Technical and Environmental Compliance Assistance Program.
- 8-4-315. Permits.
- 8-4-316. Burning of storm debris.

**Publisher’s Notes.** Acts 1965, No. 183, § 7, provided in part that Acts 1949, No. 472 was amended by adding a new “Part 2, Air Pollution” (subchapter 3 of this chapter).

**Cross References.** Permit fees for air, water, and solid waste pollution control activities, § 8-1-101 et seq.

**Effective Dates.** Acts 1949, No. 472, § 12: approved Mar. 29, 1979. Emergency clause provided: “Whereas, the pollution of the waters and the streams in the State of Arkansas from sewage, industrial waste, garbage, municipal refuse, and many other sources has created and is creating a hazard and danger to the public health of the people of the State of Arkansas, and is endangering the fish and other wildlife of the State of Arkansas; and, whereas, improper and inadequate sewer systems and disposal plants and treatment works cannot be adequately inspected, checked, and supervised under existing laws; and, whereas, present laws to prevent the pollution of the streams and to protect the health and general welfare of the people are inadequate and there are overlapping authorities as to control and regulations; and whereas, the

continuance of such conditions presents an immediate and continuing threat and hazard to the public peace, health, and safety, therefore an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage.”

Acts 1965, No. 183, § 8: Mar. 10, 1965. Emergency clause provided: “Whereas, the pollution of the air resources of the State of Arkansas by air contaminants can create serious hazards to the public health and welfare of the people; and, whereas, it is the public policy of the state to maintain such a reasonable degree of purity of the air to the end that the least possible injury shall be done to human, plant, or animal life or to property, and to maintain public enjoyment of the state’s natural resources, consistent with the economic and industrial well-being of the state; and, whereas, existing laws to prevent, control, and abate air pollution are inadequate to protect the health and general welfare of the people; now, therefore, an emergency is hereby declared to exist and this act shall be in full force and effect from the date of its approval.”

Acts 1995, No. 943, § 6: Apr. 5, 1995. Emergency clause provided: “It is hereby

found and determined by the General Assembly that, in order to avoid the needless disruption of business in this state, the director of the Department of Pollution Control and Ecology should be given authority to grant temporary variances and interim authority to construct or operate regulated activities. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public

peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

## RESEARCH REFERENCES

**ALR.** Recovery for injury to land caused by airborne pollutants. 2 A.L.R.4th 1054.

Statute of limitations as to cause of action for nuisance based on air pollution. 19 A.L.R.4th 456.

**Am. Jur.** 61A Am. Jur. 2d, Poll. Cont., § 50 et seq.

**C.J.S.** 39A C.J.S., Health & Env., § 130.

## 8-4-301. Legislative intent.

(a) In the interest of the public health and welfare of the people, it is declared to be the public policy of the State of Arkansas to maintain such a reasonable degree of purity of the air resources of the state to the end that the least possible injury should be done to human, plant, or animal life or to property and to maintain public enjoyment of the state's natural resources, consistent with the economic and industrial well-being of the state.

(b) The program for the control of air pollution under this chapter shall be undertaken in a progressive manner, and each of its successive objectives shall be sought to be accomplished by a maximum of cooperation and conciliation among all the parties concerned.

**History.** Acts 1949, No. 472, [Part 2], § 1, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1931.

### RESEARCH REFERENCES

**Ark. L. Rev.** Wright & Henry, The Arkansas Air Pollution Control Program: Past, Present and Future. 51 Ark. L. Rev. 227.

### CASE NOTES

**Cited:** Enviroclean, Inc. v. Arkansas Pollution Control & Ecology Comm'n, 314 Ark. 98, 858 S.W.2d 116 (1993).

#### 8-4-302. Purpose.

It is the purpose of this subchapter to safeguard the air resources of the state by controlling or abating air pollution that exists when this subchapter takes effect and preventing new air pollution under a program which shall be consistent with the declaration of policy stated in § 8-4-301 and with this subchapter.

**History.** Acts 1949, No. 472, [Part 2], § 2, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1932.

#### 8-4-303. Definitions.

As used in this subchapter:

(1) "Air-cleaning device" means any method, process, or equipment which removes, reduces, or renders less noxious air contaminants discharged into the atmosphere;

(2) "Air contaminant" means any solid, liquid, gas, or vapor or any combination thereof;

(3) "Air contamination" means the presence in the outdoor atmosphere of one (1) or more air contaminants that contribute to a condition of air pollution;

(4) "Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who owns or operates the building, premises, or other property in, at, or on which such source is located or the facility, equipment, or other property by which the emission is caused or from which the emission comes;

(5) "Air pollution" means the presence in the outdoor atmosphere of one (1) or more air contaminants in quantities, of characteristics, and of a duration that are materially injurious or can be reasonably expected



to become materially injurious to human, plant, or animal life or to property, or that unreasonably interfere with enjoyment of life or use of property throughout the state or throughout the area of the state as shall be affected thereby;

(6) "Area of the state" means any city or county, or portion thereof, or other substantial geographical area of the state as may be designated by the Arkansas Pollution Control and Ecology Commission;

(7) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(8) "Department" means the Arkansas Department of Environmental Quality or its successor;

(9) "Director" means the Director of the Arkansas Department of Environmental Quality or its successor; and

(10) "Person" means any individual, partnership, firm, company, public or private corporation, association, joint-stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state, or any other legal entity whatever that is recognized by law as the subject of rights and duties.

**History.** Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1933; Acts 1997, No. § 3, as added by Acts 1965, No. 183, § 7; 1219, § 6; 1999, No. 1164, § 30.

#### CASE NOTES

##### **Air Pollution.**

Pursuant to § 8-4-229(c), the organizations failed to meet their burden of showing that the Arkansas Pollution Control and Ecology Commission's decision affirming the issuance of air and hazardous-waste permits for the construction of a facility to dispose of chemical weapons was erroneous because they failed to show that the issuance of the permits for the

facility would cause air pollution, as defined in subdivision (5); thus, the Commission's decision to issue the permits was supported by substantial evidence and was proper. *Pine Bluff for Safe Disposal v. Ark. Pollution Control & Ecology Comm'n*, 354 Ark. 563, 127 S.W.3d 509 (2003).

**Cited:** *Bryant v. Mathis*, 310 Ark. 737, 839 S.W.2d 528 (1992).

#### **8-4-304. Applicability of water pollution provisions.**

All provisions of §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-230 relating to water pollution shall apply to this subchapter unless manifestly inconsistent therewith, including, but not limited to, the provisions of §§ 8-4-205, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229 relating to hearings before the Arkansas Pollution Control and Ecology Commission, notice, right to appeal, and procedure, and § 8-4-230 relating to variances and interim authority.

**History.** Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1940; Acts 1995, No. § 10, as added by Acts 1965, No. 183, § 7; 943, § 2.

**CASE NOTES****In General.**

As the agency charged with administering the Water and Air Pollution Control Act, the Arkansas Pollution Control and Ecology Commission is given authority to issue, modify, and revoke permits regulat-

ing the emission of air pollutants under § 8-4-203 and this section. *Enviroclean, Inc. v. Arkansas Pollution Control & Ecology Comm'n*, 314 Ark. 98, 858 S.W.2d 116 (1993).

**8-4-305. Exceptions.**

The provisions of this subchapter do not apply to:

(1) Agricultural operations in the growing or harvesting of crops and the raising of fowl or animals;

(2) Use of equipment in agricultural operations in the growing of crops or the raising of fowl or animals;

(3) Barbecue equipment or outdoor fireplaces used in connection with any residence;

(4) Land clearing operations or land grading;

(5) Road construction operations and the use of mobile and portable equipment and machinery incident thereto;

(6) Incinerators and heating equipment in or used in connection with residences used exclusively as dwellings for not more than four (4) families;

(7) Fires set or permitted by any public officer, board, council, or commission when the fire is set or permission to burn is given in the performance of the duty of the officer for the purpose of weed abatement, the prevention or elimination of a fire hazard, or the instruction of employees in the methods of fire fighting, which is necessary in the opinion of the officer, or from fires set pursuant to permit for the purpose of instruction of employees of private industrial concerns in methods of fire fighting, or for civil defense instruction; or

(8)(A) Unless prohibited by municipal or county ordinance, open fires used at a construction site only for the purpose of warming persons on the site during cold weather.

(B) Such fires:

(i) Shall be fueled only by wood or wood products;

(ii) Must be controlled to the extent necessary to prevent a fire hazard or local nuisance; and

(iii)(a) Must be confined within a container made of nonflammable material.

(b) The container shall not exceed thirty inches (30") in width and thirty inches (30") in length.

**History.** Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1934; Acts 1997, No. § 4, as added by Acts 1965, No. 183, § 7; 259, § 1.

## CASE NOTES

**Growing or Harvesting of Crops.**

The chancellor did not err in not finding the lumber company exempt under this section since the milling operation was

not the "growing or harvesting of crops." *J.W. Black Lumber Co. v. Arkansas Dep't of Pollution Control & Ecology*, 290 Ark. 170, 717 S.W.2d 807 (1986).

**8-4-306. Political subdivisions preempted — Exception.**

(a) In order to avoid conflicting and overlapping jurisdiction, it is the intention of this chapter to occupy, by preemption, the field of control and abatement of air pollution and contamination and no political subdivision of this state shall enact or enforce laws, ordinances, resolutions, rules, or regulations in this field.

(b) Notwithstanding subsection (a) of this section, any political subdivision of this state may enact and enforce laws, ordinances, resolutions, rules, or regulations for the purpose of prohibiting burning in the open or in a receptacle having no means for significantly controlling the fuel/air ratio.

(c) Nothing in this chapter shall be construed to prevent private actions under existing laws.

**History.** Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1941; Acts 1989, No. § 12, as added by Acts 1965, No. 183, § 7; 765, § 1.

**8-4-307. Private rights unchanged.**

(a) Persons other than the state or the Arkansas Department of Environmental Quality shall not acquire actionable right by virtue of this subchapter. The basis for proceedings that result from violation of any standard, rule, or regulation promulgated by the Arkansas Pollution Control and Ecology Commission shall inure solely to and shall be for the benefit of the people of the state generally, and it is not intended to create in any way new rights or to enlarge existing rights or to abrogate existing private rights.

(b) A determination by the department that air pollution or air contamination exists or that any standard, rule, or regulation has been violated, whether or not a proceeding or action is brought by the state, shall not create, by reason thereof, any presumption of law or finding of fact that shall inure to or be for the benefit of any person other than the state.

**History.** Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1943; Acts 1997, No. § 14, as added by Acts 1965, No. 183, § 7; 1219, § 6.

**8-4-308. Industrial secrets confidential.**

(a)(1)(A) Any information that constitutes a trade secret under § 4-75-601 et seq. that is obtained by the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission or its employees in the administration of this



chapter shall be kept confidential, except for emission data that is submitted to the state, local agency, or the United States Environmental Protection Agency, which is otherwise obtained by any of those agencies pursuant to the Clean Air Act.

(B) Only such emission data is to be publicly available.

(2)(A) The manner and rate of operation of the source, if such information is a trade secret, shall be kept confidential.

(B) Provided, that the identity, amount, frequency, and concentration of the emissions is publicly available.

(b) Any violation of this section shall be unlawful and constitutes a misdemeanor.

**History.** Acts 1949, No. 472, [Part 2], § 7, as added by Acts 1965, No. 183, § 7; 1983, No. 657, § 1; 1985, No. 763, § 1; A.S.A. 1947, § 82-1937; Acts 1995, No. 907, § 1; 1997, No. 1219, § 6.

**U.S. Code.** The Clean Air Act, referred to in this section, is codified primarily as 42 U.S.C. § 7401 et seq.

## RESEARCH REFERENCES

**Ark. L. Rev.** Watkins, Access to Public Records under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

### 8-4-309. Construction limited — Exception.

(a) Nothing contained in this subchapter shall be construed as amending or repealing § 20-21-201 et seq. concerning the control of radiation or as granting to the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission any jurisdiction or authority with respect to air conditions existing solely within the property boundaries of any plant, works, or shop or with respect to employer-employee relationships as to health and safety hazards.

(b) Notwithstanding the preceding limitation, the department and the commission shall have jurisdiction and authority over air conditions associated with the removal, encapsulation, enclosure, transportation, or disposal of asbestos-containing material regardless of whether such removal, encapsulation, enclosure, transportation, or disposal is conducted within the property boundaries of any plant, works, or shop.

**History.** Acts 1949, No. 472, [Part 2], § 13, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1942; Acts 1989, No. 559, § 1; 1997, No. 1219, § 6.

### 8-4-310. Unlawful actions.

(a) It shall be unlawful and constitute a misdemeanor:

(1) To knowingly cause air pollution as defined in § 8-4-303;

(2) To construct, install, use, or operate any source capable of emitting air contaminants without having first obtained a permit to do so, if required by the regulations of the Arkansas Pollution Control and

Ecology Commission, or to do so contrary to the provisions of any permit issued by the Arkansas Department of Environmental Quality or after any such permit has been suspended or revoked; or

(3) To violate any rule, regulation, or order of the commission issued pursuant to this chapter.

(b) The liabilities imposed for violation of subdivisions (a)(1)-(3) of this section or any other provision of this chapter shall not apply with respect to any unintended violation caused by war, strike, riot, or other catastrophe, or accidental breakdown of equipment if promptly repaired.

**History.** Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1938; Acts 1997, No. § 8, as added by Acts 1965, No. 183, § 7; 1219, § 6.

### CASE NOTES

#### Violation.

Where a corporation with an incinerator permit transferred all of its stock to a second corporation, there was substantial evidence to support the Arkansas Pollution Control and Ecology Commission's conclusion that the first corporation

thereby transferred its permitted facility to the second corporation, a transfer prohibited by the permit. *Enviroclean, Inc. v. Arkansas Pollution Control & Ecology Comm'n*, 314 Ark. 98, 858 S.W.2d 116 (1993).

### 8-4-311. Powers generally.

(a) The Arkansas Department of Environmental Quality or its successor shall have the power to:

(1) Develop and effectuate a comprehensive program for the prevention and control of all sources of pollution of the air of this state;

(2) Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the federal government, and with affected groups in the furtherance of the purposes of this chapter;

(3) Encourage and conduct studies, investigations, and research relating to air pollution and its causes, prevention, control, and abatement as it may deem advisable and necessary;

(4) Collect and disseminate information relative to air pollution and its prevention and control;

(5) Consider complaints and make investigations;

(6) Encourage voluntary cooperation by the people, municipalities, counties, industries, and others in preserving and restoring the purity of the air within the state;

(7) Administer and enforce all laws and regulations relating to pollution of the air;

(8) Represent the state in all matters pertaining to plans, procedures, or negotiations for interstate compacts in relation to air pollution control;

(9)(A) Cooperate with and receive moneys from the federal government or any other source for the study and control of air pollution.

(B) The department is designated as the official state air pollution control agency for such purposes;

(10) Make, issue, modify, revoke, and enforce orders prohibiting, controlling, or abating air pollution and requiring the adoption of remedial measures to prevent, control, or abate air pollution;

(11) Institute court proceedings to compel compliance with the provisions of this chapter and rules, regulations, and orders issued pursuant to this chapter; and

(12) Exercise all of the powers in the control of air pollution granted to the department for the control of water pollution under §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229.

(b) The Arkansas Pollution Control and Ecology Commission shall have the power to:

(1)(A) Promulgate rules and regulations for implementing the substantive statutes charged to the department for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report that shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgate rules, regulations, and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgate rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, provide the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;



(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department, provided, however, that the director shall always remain within the plenary authority of the Governor;

(8) Upon a majority vote, initiate review of any director's decision;

(9) Adopt, after notice and public hearing, reasonable and nondiscriminatory rules and regulations requiring the registration of and the filing of reports by persons engaged in operations that may result in air pollution;

(10)(A) Adopt, after notice and public hearing, reasonable and non-discriminatory rules and regulations, including requiring a permit or other regulatory authorization from the department, before any equipment causing the issuance of air contaminants may be built, erected, altered, replaced, used, or operated, except in the case of repairs or maintenance of equipment for which a permit has been previously used, and revoke or modify any permit issued under this chapter or deny any permit when it is necessary, in the opinion of the department, to prevent, control, or abate air pollution.

(B) A permit shall be issued for the operation or use of any equipment or any facility in existence upon the effective date of any rule or regulation requiring a permit if proper application is made for the permit.

(C) No such permit shall be modified or revoked without prior notice and hearing as provided in this section.

(D) Any person that is denied a permit by the department or that has such permit revoked or modified shall be afforded an opportunity for a hearing in connection therewith upon written application made within thirty (30) days after service of notice of such denial, revocation, or modification.

(E) The operation of any existing equipment or facility for which a proper permit application has been made shall not be interrupted pending final action thereon.

(F)(i) An applicant or permit holder that has had a complete application for a permit or for a modification of a permit pending longer than the time specified in the state regulations promulgated pursuant to Title V of the Clean Air Act Amendments of 1990, or any person that participated in the public participation process, and any other person that could obtain judicial review of such actions under state laws, may petition the commission for relief from department inaction.

(ii) The commission will either deny or grant the petition within forty-five (45) days of its submittal.

(iii) For the purposes of judicial review, either a commission denial or the failure of the department to render a final decision within thirty (30) days after the commission has granted a petition shall constitute final agency action; and

(11)(A) Establish through its rulemaking authority, either alone or in conjunction with the appropriate state or local agencies, a system for the banking and trading of air emissions designed to maintain both the state's attainment status with the national ambient air quality standards mandated by the Clean Air Act and the overall air quality of the state.

(B) The commission may consider differential valuation of emission credits as necessary to achieve primary and secondary national ambient air quality standards, and may consider establishing credits for air pollutants other than those designated as criteria air pollutants by the United States Environmental Protection Agency.

(C) Any regulation proposed pursuant to this authorization shall be reported to the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof prior to its final promulgation.

**History.** Acts 1949, No. 472, [Part 2], § 5, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1935; Acts 1993, No. 994, § 1; 1995, No. 895, § 4; 1997, No. 179, § 1; 1997, No. 1219, § 6; 1999, No. 1164, § 31.

**A.C.R.C. Notes.** The language used in Acts 1997, No. 1219 was not taken from the most recent publication, consequently, subdivisions (15) and (16) of (a), which appeared in the 1995 Supplement, were not included in the 1997 version of this section. Prior to the 1997 amendment of this section, subdivisions (15) and (16) read as follows:

"(15)(A) Adopt, after notice and public hearing, reasonable and nondiscriminatory rules and regulations, including requiring a permit, before any equipment causing the issuance of air contaminants may be built, erected, altered, replaced, used, or operated, except in the case of repairs or maintenance of equipment for which a permit has been previously used, and revoke or modify any permit issued under this chapter or deny any permit when it is necessary, in the opinion of the commission, to prevent, control, or abate air pollution.

"(B) A permit shall be issued for the operation or use of any equipment or any facility in existence upon the effective date of any rule or regulation requiring a permit if proper application is made for the permit.

"(C) No such permit shall be modified or revoked without prior notice and hearing as provided in this subchapter.

"(D) Any person who is denied a permit by the commission or who has such permit revoked or modified shall be afforded an opportunity for a hearing in connection therewith upon written application made within thirty (30) days after service of notice of such denial, revocation, or modification.

"(E) The operation of any existing equipment or facility for which a proper permit application has been made shall not be interrupted pending final action thereon.

"(F)(i) An applicant or permit holder who has had a complete application for a permit or for a modification of a permit pending longer than the time specified in the state regulations promulgated pursuant to Title V of the Clean Air Act Amendments of 1990, or any person who participated in the public participation process, and any other person who could obtain judicial review of such actions under state laws, may petition the commission for relief from department inaction.

"(ii) The commission will either deny or grant the petition within forty-five (45) days of its submittal.

"(iii) For the purposes of judicial review, either a commission denial or the failure of the department to render a final decision within thirty (30) days after the commission has granted a petition shall constitute final agency action; and

"(16)(A) Establish through its rulemaking authority, either alone or in conjunction with the appropriate state or local

agencies, a system for the banking and trading of air emissions designed to maintain both the state's attainment status with the national ambient air quality standards mandated by the federal Clean Air Act and the overall air quality of the state.

"(B) The commission may consider differential valuation of emission credits as necessary to achieve primary and secondary national ambient air quality standards, and may consider establishing

credits for air pollutants other than those designated as criteria air pollutants by the federal Environmental Protection Agency.

"(C) Any regulation proposed pursuant to this authorization shall be reported to the Joint Interim Committee on Public Health, Welfare, and Labor prior to its final promulgation."

**U.S. Code.** The Clean Air Act referred to in this section is codified primarily as 42 U.S.C. § 7401 et seq..

### RESEARCH REFERENCES

**Ark. L. Rev.** Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

### CASE NOTES

**Cited:** United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

### 8-4-312. Factors in exercise of powers.

In exercising their powers and responsibilities under this chapter, the Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission shall take into account and give consideration to the following factors:

- (1) The quantity and characteristics of air contaminants and the duration of their presence in the atmosphere that may cause air pollution in a particular area of the state;
- (2) Existing physical conditions and topography;
- (3) Prevailing wind directions and velocities;
- (4) Temperatures and temperature-inversion periods, humidity, and other atmospheric conditions;
- (5) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture, or sunlight;
- (6) The predominant character of development of the area of the state such as residential, highly developed industrial, commercial, or other characteristics;
- (7) Availability of air-cleaning devices;
- (8) Economic feasibility of air-cleaning devices;
- (9) Effect on normal human health of particular air contaminants;
- (10) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;
- (11) The extent of danger to property in the area reasonably to be expected from any particular air contaminant;
- (12) Interference with reasonable enjoyment of life by persons in the area and conduct of established enterprises that can reasonably be expected from air contaminants;



(13) The volume of air contaminants emitted from a particular class of air contamination sources;

(14) The economic and industrial development of the state and the social and economic value of the air contamination sources;

(15) The maintenance of public enjoyment of the state's natural resources; and

(16) Other factors that the department or the commission may find applicable.

**History.** Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1936; Acts 1997, No. § 6, as added by Acts 1965, No. 183, § 7; 1219, § 6.

### CASE NOTES

#### **Applicability.**

The Arkansas Pollution Control and Ecology Commission is under a mandate to consider the factors set out in this section in adopting its rules and regulations, but there is nothing in the Water and Air Pollution Control Act suggesting the legislature intended these factors to

be applied in each specific instance; instead, these factors were intended to have a general application, to apply to classes, rather than to individual cases. *J.W. Black Lumber Co. v. Arkansas Dep't of Pollution Control & Ecology*, 290 Ark. 170, 717 S.W.2d 807 (1986).

### **8-4-313. Variance from regulations.**

(a)(1) The Arkansas Pollution Control and Ecology Commission may grant specific variances from the particular requirements of any rule, regulation, or general order to such specific persons or class of persons or such specific air contamination source, upon such conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with the rule, regulation, or general order is inappropriate because of conditions beyond the control of the person granted the variance or because of special circumstances that would render strict compliance unreasonable, unduly burdensome, or impractical due to special physical conditions or causes or because strict compliance would result in substantial curtailment or closing down of a business, plant, or operation or because no alternative facility or method of handling is yet available.

(2) Variances may be limited in time.

(3) In determining whether or not a variance shall be granted, the commission shall weigh the equities involved and the relative advantages and disadvantages to the residents and the occupation and activity affected.

(b)(1) Any person seeking a variance shall do so by filing a petition for a variance with the Director of the Arkansas Department of Environmental Quality.

(2)(A) The director shall promptly investigate the petition and make a recommendation to the commission as to the disposition thereof.

(B)(i) If the recommendation is against the granting of the variance, a hearing shall be held thereon after not less than ten (10) days, prior to notice to the petitioner.

(ii) If the recommendation of the director is for the granting of a variance, the commission may do so without a hearing. However, upon the petition of any person aggrieved by the granting of a variance, a public hearing shall be held.

(c)(1) A variance granted may be revoked or modified by the commission after a public hearing held upon not less than ten (10) days' prior notice.

(2) The notice shall be served upon all persons known to the commission that will be subjected to greater restrictions if the variance is revoked or modified, that are likely to be affected, or that have filed with the commission a written request for such notification.

**History.** Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1939; Acts 1997, No. § 9, as added by Acts 1965, No. 183, § 7; 1219, § 6.

#### CASE NOTES

**Cited:** Arkansas Comm'n of Pollution Control & Ecology v. Husky Indus., Inc., 293 Ark. 249, 737 S.W.2d 157 (1987).

#### **8-4-314. Compliance Advisory Panel — Small Business Stationary Source Technical and Environmental Compliance Assistance Program.**

(a) There shall be created a Compliance Advisory Panel, the "panel", composed of seven (7) individuals.

(b) The panel shall consist of:

(1) Two (2) members who are not owners or representatives of owners of small business stationary sources selected by the Governor to represent the general public;

(2) Two (2) members selected by the Speaker of the House of Representatives who are owners or who represent owners of small business stationary sources;

(3) Two (2) members selected by the President Pro Tempore of the Senate who are owners or who represent owners of small business stationary sources; and

(4) One (1) member selected by the Director of the Arkansas Department of Environmental Quality.

(c)(1) Panel members shall serve a term of four (4) years.

(2) In the event of a vacancy in the membership of the panel concerning a member selected by the General Assembly or the Governor, the Governor shall appoint a person meeting the applicable eligibility requirements of the vacated position to fill the vacancy for the remainder of the unexpired term.

(3) In the event of a vacancy in the membership of the panel concerning the member appointed by the director, the director shall appoint a person to fill the vacancy for the remainder of the unexpired term.

(d)(1) The panel shall hold at least one (1) regular meeting in each calendar year at a time and place determined by the panel.

(2) Special meetings may be called at the discretion of the chair.

(e) The panel shall select a chair and vice chair during the first annual meeting of each four-year term.

(f) Four (4) members of the panel shall constitute a quorum to transact business.

(g) The members of the panel may receive expense reimbursement in accordance with § 25-16-901 et seq.

(h) The panel shall:

(1) Render advisory opinions concerning the effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, the "program", difficulties encountered, and degree and severity of enforcement;

(2) Make periodic reports to the Administrator of the United States Environmental Protection Agency concerning the compliance of the program with the requirements of the Paperwork Reduction Act of 1980, the Regulatory Flexibility Act, and the Equal Access to Justice Act;

(3) Review information for small business stationary sources to assure such information is understandable by the layperson; and

(4) Have the program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

**History.** Acts 1993, No. 242, § 2; 1993, No. 251, § 2; 1997, No. 250, § 45; 1999, No. 1164, §§ 32, 33; 2001, No. 1288, § 2.

**Publisher's Notes.** Acts 1993, Nos. 242 and 251, § 1, provided: "In order to comply with Section 507 of the federal Clean Air Act, this statute is enacted. The program establishes a compliance advisory panel for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program. This program is to be administered by the Arkansas Department of Pollution Control and Ecology and is intended to help eligible small businesses understand and comply with the federal Clean Air Act."

Acts 1993, Nos. 242 and 251, § 2, also provided in part: "The panel shall hold its first meeting by November, 1993."

Acts 1993, Nos. 242 and 251, § 2, also

provided in part: "In furtherance of the act, the seven (7) individuals comprising the panel shall be selected during the 1993 General Legislative Session."

**U.S. Code.** The Regulatory Flexibility Act, referred to in this section, is codified as 5 U.S.C § 601 et seq.

The Equal Access to Justice Act, referred to in this section, is codified as 5 U.S.C § 504, 28 U.S.C. § 2412, and 42 U.S.C. § 1988.

The Paperwork Reduction Act of 1980, referred to in this section, is codified primarily as 44 U.S.C. § 3501 et seq.

The Small Business Stationary Source Technical and Environmental Compliance Assistance Program, referred to in this section, was created pursuant to 42 U.S.C. § 7401 et seq.

## 8-4-315. Permits.

The Arkansas Department of Environmental Quality is authorized to require, issue, and enforce operating permits for major sources in satisfaction of Title V of the Clean Air Act Amendments of 1990.

**History.** Acts 1995, No. 384, § 11; 1997, No. 310, § 2; 1999, No. 1164, § 34.

**A.C.R.C. Notes.** Acts 1995, No. 384, § 11, provided: "Permit transfers. To the



extent consistent with federal requirements, permits issued pursuant to this subchapter may be transferred in accordance with the procedures set out in § 8-4-203(f)."

Acts 1997, No. 310, § 2 has been

deemed to amend Acts 1995, No. 384, § 11.

**U.S. Code.** The Clean Air Act referred to in this section is codified primarily as 42 U.S.C. § 7401 et seq..

### **8-4-316. Burning of storm debris.**

(a) Open burning may be used by county governments to dispose of vegetative storm debris in counties that have been declared disaster areas by state or federal authorities authorized to make the declaration, provided that:

(1)(A) The burning shall be limited to no more than four (4) sites per county as designated by the county judge and reported in writing to the Arkansas Department of Environmental Quality at least three (3) days before the commencement of any burning, except as provided in subdivision (a)(1)(B) of this section.

(B) If the Director of the Arkansas Department of Environmental Quality determines that the scope of the disaster warrants additional burning sites, then the director may authorize additional sites;

(2)(A) The burning shall be performed during daylight hours on Monday through Friday.

(B) However, burning shall not occur on state and federal holidays;

(3) All burning shall be completed within one hundred twenty (120) days of designation of the county as a disaster area unless:

(A)(i) At least ten (10) calendar days before the expiration of the period of time under subdivision (a)(3) of this section, the county judge of the affected area makes a written request to the director for an extension of time.

(ii) An extension made under subdivision (a)(3)(A)(i) of this section shall include a detailed explanation of the reason for the request for an extension of time to complete the burning of the vegetative storm debris;

(B) The director determines that the scope of the disaster warrants an extension; and

(C) The total amount of time extended does not exceed two hundred forty (240) calendar days from the original designation of the county as a disaster area;

(4) All burning shall be conducted in a manner so as not to create a nuisance to surrounding communities or citizenry;

(5) Adequate firefighting personnel shall be available to respond to an emergency at any designated burning site;

(6) Burning shall not be conducted within:

(A) Five hundred feet (500') of a residence unless the owner of the residence has given written permission for the burning; or

(B) One thousand feet (1,000') of a school;

(7) The county is in attainment of all national ambient air quality standards; and

(8) A burn ban is not in effect for the county.

- (b) The director may require that:
  - (1) Designated burning sites be relocated; and
  - (2) Any or all burning allowed under this section be stopped in response to actual or potential violations of state or federal air quality standards in the impacted areas.
- (c) The open burning of nonvegetative storm debris, including, but not limited to, tires, lumber, construction debris, demolished structures, household wastes, and trade wastes shall not be permitted under this section.
- (d) County governments burning vegetative storm debris under this section shall comply with all other applicable federal, state, or local statutes, rules, regulations, ordinances, and orders.

**History.** Acts 2005, No. 944, § 1; 2011, No. 10, § 1. added “unless” at the end of the introductory language of (a)(3); and inserted (a)(3)(A) through (C).

**Amendments.** The 2011 amendment

SUBCHAPTER 4 — LEAD-BASED PAINT-HAZARD ACT

SECTION.  
8-4-401 — 8-4-409. [Repealed.]

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**Publisher’s Notes.** For present law, see the ‘Arkansas Lead-Based Paint-Hazard Act of 2011’, § 20-27-2501 et seq.

**Effective Dates.** Acts 1997, No. 309, § 7: Feb. 28, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that the authority for the Department of Pollution Control and Ecology to license and certify firms, training providers, inspectors, risk assessors, supervisors, project designers, and workers and to establish work practice standards for lead-based paint-hazard activities is necessary to protect the lives, health and welfare of the people of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2011, No. 1011, § 8: July 1, 2011. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that lead and lead-based paint have been determined to be a human health concern posing an immediate danger to children, families, and the environment; and that this act is immediately necessary to prevent irreparable harm to children in this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2011.”

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8-4-401 — 8-4-409. [Repealed.]

**Publisher’s Notes.** This subchapter, concerning the Lead-Based Paint-Hazard Act, was repealed by Acts 2011, No. 1011, § 2. The former subchapter was derived from the following sources:

- 8-4-401. Acts 1997, No. 309, § 1.
- 8-4-402. Acts 1997, No. 309, § 1; 1999, No. 1164, § 35.
- 8-4-403. Acts 1997, No. 309, § 1; 1999, No. 1164, §§ 36, 37.
- 8-4-404. Acts 1997, No. 309, § 1.
- 8-4-405. Acts 1997, No. 309, § 1.

8-4-406. Acts 1997, No. 309, § 1.

8-4-407. Acts 1997, No. 309, § 1.

8-4-408. Acts 1997, No. 309, § 1; 2009,  
No. 1199, § 5.

8-4-409. Acts 1997, No. 309, § 1; 1999,  
No. 53, § 1; 1999, No. 1164, § 38.



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